

**CHAPTER NO. 534**

**SENATE BILL NO. 1161**

**By Norris, Burks, McNally, Mr. Speaker Wilder, Atchley, Beavers, Bryson, Burchett, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Haynes, Henry, Herron, Jackson, Ketron, Kilby, Kurita, Kyle, McLeary, Miller, Curtis S. Person, Jr., Ramsey, Southerland, Trail, Williams**

**Substituted for: House Bill No. 1675**

**By Davidson, Bone, Crider, Mr. Speaker Naifeh, Rinks, Fitzhugh, Head, McDonald, Baird, Sargent, Fowlkes, Hensley, Maddox, Winningham, Cochran, Mumpower, DuBois, Brenda Turner, Pinion, Hargett, Armstrong, Brown, Montgomery, Langster, Pleasant, Bittle, Shaw, Garrett, Roach, McDaniel, Harmon, Russell Johnson, Overbey, Vaughn, McCord, Kent, Todd, West, Sharp, Coleman, McMillan, Shepard, McKee, Hood, Curtiss, Ferguson, Black, Stanley, Dunn, Phillip Johnson, Gresham, Harry Brooks, Casada, Davis, Wood, Walker, Patton, Vincent, Litz, Yokley, Eldridge, Clem, Hawk, Harrison**

AN ACT to amend Tennessee Code Annotated, Title 43, relative to the Tennessee Processing Cooperative Law.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 38:

43-38-101. This act shall be known and may be cited as the "Tennessee Processing Cooperative Law".

43-38-102. The general assembly has the power to amend or repeal all or part of Chapters 38-70 of this title at any time and all domestic cooperatives subject to Chapters 38-70 of this title shall be governed by such amendment or repeal.

SECTION 2. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 39:

43-39-101. As used in Chapters 38-70 of this title, unless the context otherwise requires:

(1) "Address" means mailing address, including a zip code. In the case of a registered address, the term means the mailing address and the actual office location, which may not be a post office box;

(2) "Articles" or "articles of organization" means articles of organization as originally filed and subsequently amended;

(3) "Association" means an organization conducting business under a cooperative plan under the laws of this state;

(4) "Board" or "board of directors" means the board of directors of a cooperative;

(5) "Business entity" means a corporation, limited liability

company, limited liability partnership or other legal entity, association or body vested with the power or function of a legal entity;

(6) "Bylaws" means a written agreement described in § 43-43-101 among the members concerning the cooperative;

(7) "Commissioner" means the Commissioner of the Department of Agriculture;

(8) "Cooperative" means an association organized under this title conducting business on a cooperative plan as provided under this act;

(9) "Domestic business entity" means a business entity organized under the laws of this state;

(10) "Distribution" means a direct or indirect transfer of money or other property (except its own membership interests) with or without consideration, or an incurrence or issuance of indebtedness, (whether directly or indirectly, including through a guaranty) by a cooperative to or for the benefit of any of its members in respect of membership interests. A distribution may be in the form of an interim distribution or a liquidation distribution; a purchase, redemption, or other acquisition of its membership interests; a distribution of indebtedness (which includes the incurrence of indebtedness, whether directly or indirectly, including through a guaranty, for the benefit of the members) or otherwise;

(11) "Filed with the secretary of state" means that a document meeting the applicable requirements of this article, signed and accompanied by the required filing fee, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the document the word "Filed" or a similar word determined by the secretary of state and the month, day, and year of filing, record the document in the office of the secretary of state, and return the document to the person or entity who delivered it for filing;

(12) "Financial rights" means a member's right to:

(A) Share in profits and losses as provided in §§ 43-65-101 and 43-65-102; and

(B) Share in distributions as provided in §§ 43-65-101 and 43-65-102;

(13) "Governance rights" means a right to vote on one (1) or more matters and all a member's rights as a member in the cooperative other than financial rights;

(14) "Majority" means with respect to a vote of the members, if voting on a per capita basis, a majority in number of the members entitled to vote on a specific matter, or if the voting is determined otherwise, a majority of the voting interest (which may be expressed as a percentage) entitled to vote on a specific matter, and with respect to a vote of the directors, a majority in number of the directors entitled to vote on a specific matter;

(15) "Member" means a person or entity reflected on the books

of the cooperative as the owner of governance rights of a membership interest of the cooperative and includes patron and nonpatron members;

(16) "Membership interest" means a member's interest in a cooperative consisting of a member's financial rights, a member's right to assign financial rights, a member's governance rights and a member's right to assign governance rights. Membership interest includes patron membership interests and nonpatron membership interests;

(17) "Members' meeting" means a regular or special members' meeting;

(18) "Nonpatron membership interest" means a membership interest that does not require the holder to conduct patronage business for or with the cooperative to receive financial rights or distributions;

(19) "Patron" means a person or entity who conducts patronage business with the cooperative;

(20) "Patronage" means business, transactions, or services done for or with the cooperative as defined by the cooperative;

(21) "Patron member" means a member holding a patron membership interest;

(22) "Patron membership interest" means the membership interest requiring the holder to conduct patronage business for or with the cooperative, as specified by the cooperative to receive financial rights or distributions;

(23) "Required records" are those records required to be maintained under § 43-60-101;

(24) "Secretary of state" means the person who holds the office of secretary of state of Tennessee. A filing with the secretary of state occurs by a proper filing with the office of the secretary of state. An action required by the secretary of state may be performed by employees or agents of the office of the secretary of state;

(25) "Signed" means that the signature of a person has been written on a document, and, with respect to a document required by this act to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this act, the articles or bylaws, or by a resolution approved by the directors or the members. A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically or in any other manner reproduced on the document;

(26) "Surviving entity" means the entity resulting from a merger;

(27) "Termination" means the end of a cooperative's existence as a legal entity and occurs when the articles of termination are filed with the secretary of state under § 43-69-601 or is considered filed with the secretary of state under § 43-68-101; and

(28) "Written action" means a written document signed by those

persons required to take the action described.

SECTION 3. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 40:

43-40-101. (a) Notice under Chapters 38-70 of this title shall be in writing except that oral notice is effective if it is reasonable under the circumstances and not prohibited by the articles or bylaws.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable; notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic cooperative to its members, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the member's address shown in the cooperative's current record of members.

(d) Written notice to a domestic cooperative may be addressed to its registered agent at its registered office or to the cooperative or its secretary at its principal office shown in its most recent annual report.

(e) Except as provided in subsection (c), written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five (5) days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed thereon;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(4) Twenty (20) days after its deposit in the United States mail, as evidenced by the postmark if mailed correctly addressed, and with other than first class, registered or certified postage affixed.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If Chapters 38-70 of this title prescribe notice requirements for particular circumstances, those requirements govern. If the articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of Chapters 38-70 of this title, those requirements govern.

SECTION 4. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 41:

43-41-101. A cooperative may be formed and organized on a cooperative plan as provided under this title to market, process, or otherwise change the form or marketability of crops, livestock and other agricultural products, including manufacturing and further processing of those products and

other purposes that are necessary or convenient to facilitate the production or marketing of agricultural products by patron members and other purposes that are related to the business of the cooperative; to provide supplies and services to its members; and for purposes that cooperatives are authorized by law.

43-41-102. (a) A cooperative may be organized by one (1) or more individuals who shall be adult natural persons, who may act for themselves as individuals or as the agents of other entities, by filing with the secretary of state articles for the cooperative which contain the information required by § 43-42-101. The organizers forming the cooperative need not be members of the cooperative. Unless a delayed effective date is specified in the articles, the cooperative is formed and its existence begins when the articles are filed with the secretary of state.

(b) If the date of formation is the date of filing of the articles, the secretary of state's acceptance for filing of the articles is conclusive proof that the organizers satisfied all conditions precedent to formation except in a proceeding by the state to cancel or revoke the formation for existence of the cooperative or to dissolve the cooperative involuntarily.

(c) If the date of formation of the cooperative is later than the date of filing of the initial articles with the secretary of state, the organizers or any member may, within thirty (30) days after the date of actual formation, file a certificate of formation which states that the cooperative was formed and the date of formation. If a certificate of formation is not filed within one hundred twenty (120) days from the date of initial filing of the articles, the presumed effective date of the formation shall be on the ninetieth day following the date of filing of the articles. The presumption, however, can be rebutted.

(d) If the date of formation of the cooperative is later than the date of filing of the initial articles with the secretary of state, the secretary of state's acceptance for filing of the certificate of formation is conclusive proof that the organizers satisfied all conditions precedent to formation except in a proceeding by the state to cancel or revoke the formation or existence of the cooperative or to dissolve the cooperative involuntarily.

SECTION 5. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 42:

Section 43-42-101. (a) The organizers shall prepare the articles, which shall include:

(1) The name of the cooperative that satisfies the requirements of § 43-44-101;

(2) The purpose of the cooperative;

(3) The name and address of each organizer;

(4) The street address and zip code of the principal place of business for the cooperative and the county in which the office is located;

(5) The period of duration for the cooperative, if the duration is not to be perpetual;

(6) The capital structure of the cooperative including a statement

of the classes and relative rights, preferences, and restrictions granted to or imposed upon each class of member interests, the rights to share in profits or distributions of the cooperative, and the authority to issue member interests, which may be designated to be determined by the board;

(7) A provision designating the voting and governance rights, including which membership interests have voting power and any limitations or restrictions on the voting power, which shall be in accordance with the provisions of this act;

(8) A statement that patron membership interests with voting power shall be restricted to one (1) vote for each member regardless of the amount of patron membership interests held in the affairs of the cooperative or a statement describing the allocation of voting power allocated as prescribed in this act;

(9) A statement that membership interests held by a member are transferable only with the approval of the board or as provided in the bylaws;

(10) The names, post office addresses, and terms of office of the directors of the first board;

(11) A statement as to how profits and losses will be allocated and cash will be distributed between patron membership interests collectively and nonpatron membership interests collectively, a statement that net income allocated to patron membership interests as determined by the board in excess of dividends and additions to reserves shall be distributed on the basis of patronage, and that the records of the cooperative shall include the interests of patron membership interests and nonpatron membership interests which may be further described in the bylaws, of any classes, and in the reserves; and

(12) The street address and the zip code of the initial registered office of the cooperative, the county in which the office is located, and the name of its initial registered agent in that office.

(b) The articles shall contain the provisions in subsection (a) of this section, except that the names, post office addresses of the directors of the first board may be omitted after their successors have been elected by the members or the articles are amended or restated in their entirety.

(c) The articles may contain any other lawful provision.

(d) The articles shall be signed by the organizers.

(e) The original articles shall be filed with the secretary of state. The fee for filing the articles with the secretary of state shall be subject to the provisions of § 43-70-103(a).

(f) When the articles of organization have been filed with the secretary of state and the required fee has been paid to the secretary of state, it shall be presumed that all conditions precedent that are required to be performed by the organizers have been met.

(g) Articles of organization for a cooperative shall not be accepted for filing by the secretary of state unless the articles of organization have been approved in writing by the commissioner. Approval by the commissioner shall be based on a determination by the commissioner that the cooperative will provide new or improved markets for agriculture products in Tennessee or that the cooperative will provide opportunities for patron members of the cooperative to participate in the processing of agricultural products in Tennessee.

(h) The commissioner shall either approve or reject the proposed articles of organization within thirty (30) days after all information required by the commissioner has been submitted.

(i) If a submission of the articles of organization is rejected by the commissioner, the person or persons submitting the articles of organization may request a hearing to be conducted as a contested case hearing in accordance with Tennessee Code Annotated, Sections 4-42-201, et seq. There shall be no right to a hearing pursuant to this subsection unless a written request for a hearing is received by the commissioner within thirty (30) days of the commissioner's rejection of the proposed articles of organization.

Section 43-42-102. (a) The existence of a cooperative shall begin when the articles are filed with the secretary of state.

(b) A cooperative shall have a perpetual duration unless the cooperative provides for a limited period of duration in the articles of organization.

SECTION 6. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 43:

Section 43-43-101. (a) A cooperative shall have bylaws in writing governing the cooperative's business affairs, structure, the qualifications, classification, rights and obligations of members, and the classifications, allocations and distributions of membership interests.

(b) The bylaws of a cooperative may be adopted or amended by the board of directors as provided in subsection (c) of this section, or at a regular or special members' meeting if:

(1) The notice of the regular or special meeting contains a statement that the bylaws or restated bylaws will be voted upon and copies are included with the notice, or copies are available upon request from the cooperative and summary statement of the proposed bylaws or amendment is included with the notice;

(2) A quorum is registered as being present or represented by mail or alternative voting method if the mail or alternative voting method is authorized by the board; and

(3) The bylaws or amendment is approved by a majority vote cast, or for a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the bylaws or amendment is approved by a proportion of the vote cast or a number of the total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(c) Until the next annual or special members' meeting, the majority of directors may adopt and amend bylaws for the cooperative that are consistent with subsection (d). Such bylaws may be further amended or repealed by the members at an annual or special members' meeting.

(d) Bylaws may contain any provision relating to the management or regulation of the affairs of the cooperative that are not inconsistent with law or the articles, and shall include the following:

(1) The number of directors, and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;

(2) The qualifications of members and any limitations on their number;

(3) The manner of admission, withdrawal, suspensions, and expulsion of members;

(4) Generally the governance rights, financial rights, assignability of governance and financial rights, and other rights, privileges and obligations of members and their membership interests, which may be further described in member control agreements.

Section 43-43-102. (a) Except as otherwise provided in the articles, the bylaws must initially be agreed to by all members or the organizer(s). Any person becoming a member after the bylaws have been adopted by the organizers or the members will be deemed to have agreed to the bylaws.

(b) Unless otherwise provided in the articles or the bylaws, the amendment of the bylaws shall require the vote of members necessary to amend the articles.

(c)(1) A court of equity may enforce the bylaws by injunction or by such other equitable relief as the court in its discretion determines to be fair and appropriate in the circumstances.

(2) As an alternative to injunctive or other equitable relief, when the provisions of § 43-32-701 are applicable, a court of equity may conduct or continue the dissolution and winding up of the cooperative.

(3) Notwithstanding any provision of law to the contrary, any agreement to give dissolution avoidance consent, whether or not contained in the articles, the bylaws or other agreement entered into before the event of dissolution, is not specifically enforceable.

Section 43-43-103. (a) Unless the article provides otherwise, the board of directors or the organizers of a cooperative may adopt bylaws to be effective only in an emergency. The emergency bylaws, which are subject to amendment or repeal by the members, may make all provisions necessary for managing the cooperative during the emergency, including:

(1) Procedures for calling a meeting of the board of directors;

(2) Quorum requirements for the meeting;

(3) Designation of additional or substitute directors.



(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Action taken in good faith in accordance with the emergency bylaws:

(1) Binds the cooperative; and

(2) May not be used to impose liability on a director, officer, employee or agent of the cooperative.

SECTION 7. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 44:

Section 43-44-101. (a) The name of a cooperative shall distinguish the cooperative upon the records in the office of the secretary of state from the name of a domestic or foreign business entity, authorized or registered to do business in this state or a name the right to which is, at the time of organization, reserved or provided for by law.

(b) A cooperative may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (a). The secretary of state shall authorize use of the indistinguishable name applied for if:

(1) The other cooperative or business entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to waive its reservation or change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying cooperative.

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The other cooperative or business entity is under common control with the cooperative; consents to the use in writing; and both the other cooperative or business entity and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

(c) A domestic cooperative may elect to adopt an assumed name that complies with the requirements of subsections (a) and (b).

(1) As used in Chapters 38-70 of this title, "assumed name" means any name used by the cooperative, other than the cooperative, true name, except that the following shall not constitute the use of an assumed name:

(A) The identification by a cooperative of its business with a trademark or service mark of which it is the owner or licensed user; and

(B) The use of a name of a division, not separately organized provided, that the cooperative also clearly discloses its

name.

(2) Before transacting any business in this state under an assumed name or names, the cooperative shall, for each assumed name, pursuant to resolution by its board of directors, execute and file in accordance with § 43-70-101 and § 43-70-103, an application setting forth:

(A) The true cooperative name;

(B) The state or country under the laws of which it is organized;

(C) That it intends to transact business under an assumed name; and

(D) The assumed name which it proposes to use.

(3) The right to use an assumed name shall be effective for five (5) years from the date of filing by the secretary of state. A cooperative may reserve or use no more than five (5) assumed names during the same period.

(4) A cooperative shall renew the right to use its assumed name or names, if any, within the two (2) months preceding the expiration of such right, for a period of five (5) years, by filing an application to renew each assumed name and paying the renewal fee as prescribed by § 43-70-103(a).

(d) Any domestic cooperative may, pursuant to resolution by its governing body, change or cancel any or all of its assumed names by executing and filing, in accordance with § 43-70-101 and § 43-70-103, an application setting forth:

(1) The true cooperative name;

(2) The state or country under the laws of which it is organized;

(3) That it intends to cease transacting business under an assumed name by changing or canceling it;

(4) The assumed name to be changed from or cancelled; and

(5) If the assumed name is to be changed, the assumed cooperative name which the cooperative proposes to use.

(e) Upon the filing of an application to change an assumed name, the cooperative shall have the right to use such assumed name for the period authorized by subsection (b).

(f) The right to a domestic cooperative to use an assumed name shall be cancelled by the secretary of state if:

(1) The cooperative failed to renew an assumed name;

(2) The cooperative has filed an application to change or cancel

an assumed name; or

(3) A domestic cooperative has been dissolved.

(g) Nothing in this section, or in § 43-44-101 or § 43-44-102 shall abrogate or limit the law as to unfair competition or unfair trade practice, or derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect trade names and trademarks.

Section 43-44-102. (a) A person may reserve the exclusive use of a cooperative name, including an assumed cooperative name, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the cooperative name applied for meets the requirements of § 43-44-101 and is available, the secretary of state shall reserve the name for the applicant's exclusive use for a four-month period. Upon the expiration of the four-month period, the same or any other party may apply to reserve the same name.

(b) The owner of a reserved cooperative name, including an assumed cooperative name, may transfer the reservation to another person by delivering to the secretary of state a notice of the transfer signed by the owner that states the name and address of the transferee.

(c) The reservation of a specific name may be cancelled by filing with the secretary of state a notice, executed by the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

SECTION 8. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 45:

Section 43-45-101. (a) Each cooperative shall have and continuously maintain in this state:

(1) A registered office, which may be, but need not be, the same as its place of business;

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with the registered office, or a domestic or foreign business entity authorized to transact business in the state having a business office identical with the registered office.

(b) If a registered agent resigns or is unable to perform such agent's duties, the domestic cooperative shall promptly designate another registered agent to the end that it shall at all times have a registered agent in this state.

Section 43-45-102. (a) A cooperative may change its registered office or agent, or both, upon filing in the office of the secretary of state a statement of change setting forth:

(1) The name of the cooperative;

(2) If the address of its current registered office is to be changed,

the address to which the registered office is to be changed, and the zip code for such office, and the county in which the office is located;

(3) If its current registered agent is to be changed, the name of its new registered agent;

(4) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

(b) If a registered agent changes the street address of such registered agent's business office, such registered agent may change the street address of the registered office of any cooperative for which such registered agent is the registered agent by notifying the cooperative in writing of the change (either manually or in facsimile) and delivering to the secretary of state for filing a statement that companies with the requirement of subsection (a) and states that the cooperative has been notified of the change. The statement shall be signed and delivered to the secretary of state. If the secretary of state finds that the statement conforms to the provisions of this act, the secretary of state shall file the statement in the secretary of state's office, and upon filing the change of address of the registered office or the appointment of a new registered agent or both, as the case may be is effective.

Section 43-45-103. (a) Any registered agent of a cooperative may resign as the registered agent's agency appointment by signing and filing with the secretary of state an original statement of resignation accompanied by the registered agent's certification that the registered agent has mailed a copy thereof to the principal office by certified mail.

(b) The agency appointment is terminated, and the registered office discontinued, if so provided, on the date on which the statement is filed by the secretary of state.

Section 43-45-104. (a) A domestic cooperative's registered agent is the cooperative's agent for service of process, notice, or demand required or permitted by law to be served on the cooperative.

(b) Whenever a domestic cooperative fails to appoint or maintain a registered agent in this state, whenever its registered agent cannot be found with reasonable diligence, then the secretary of state shall be an agent of such cooperative whom any such process, notice or demand may be served.

(c) This section does not prescribe the only means, or necessarily the required means, of service on a domestic cooperative.

Section 43-45-105. (a) Service on the secretary of state, when the secretary of state is an agent for a domestic cooperative as provided in § 43-45-104(b), of any process, notice, or demand shall be made by delivering to the office of the secretary of state the original and one (1) copy of such process, notice, or demand, duly certified by the clerk of the court in which the suit or action is pending or brought, together with the proper fee. A statement which identifies which of the grounds, as listed in § 43-40-101(b), for service on the secretary of state is applicable, must be included. The office of the secretary of state shall endorse the time of receipt upon the original and copy and immediately shall send the copy, along with a written notice that service of the original was also made, by registered or certified mail, with return receipt requested, addressed to such cooperative at its registered office or principal

office as shown in the records on file in the secretary of state's office or as shown in the official registry of the state or country in which such cooperative is organized. If none of the previously mentioned addresses are available to the secretary of state, service may be made on any one (1) of the organizers at the address set forth in the articles. The secretary of state may require the plaintiff (or complainant, as the case may be) or plaintiff's attorney to furnish the latter address.

(b) The refusal or failure of such cooperative to accept delivery of the registered or certified mail provided for in subsection (a), or the refusal or failure to sign the return receipt, shall not affect the validity of such service; and any such cooperative refusing or failing to accept delivery of such registered or certified mail shall be charged with knowledge of the contents of any process, notice, or demand contained therein.

(c) When the registered or certified mail return receipt is received by the office of the secretary of state or when a domestic cooperative refuses or fails to accept delivery of the registered or certified mail and it is returned to the office of the secretary of state, the office of the secretary of state shall forward the receipt or such refused or undelivered mail to the clerk of the court in which the suit or action is pending, together with the original process, notice, or demand, a copy of the notice the secretary of state sent to the defendant cooperative and the secretary of state's affidavit setting forth the secretary of state's compliance with this section. Upon receipt thereof, the clerk shall copy the affidavit on the rule docket of the court and shall mark it, the receipt or refused or undelivered mail, and the copy of notice as of the day received and place them in the file of the suit or action where the process and pleadings are kept, and such receipt or refused or undelivered mail, affidavit, and copy of notice shall be and become a part of the technical record in the suit or action, and thereupon service on the defendant shall be complete. Service made under this section shall have the same legal force and validity as if the service had been made personally in this state.

(d) Subsequent pleadings or papers permitted or required to be served on such defendant domestic cooperative may be served on the secretary of state as agent for such defendant cooperative in the same manner, at the same cost and with the same effect as process, notice, or demand are served on the secretary of state as agent for such defendant cooperative under this section.

(e) No appearance shall be required in the suit or action by the defendant domestic cooperative nor shall any judgment be taken against the defendant domestic cooperative in less than one (1) month after the date service is completed under this section.

(f) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, which record shall include the time of such service and the secretary of state's action with reference thereto.

SECTION 9. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 46:

Section 43-46-101. (a) A cooperative may amend its articles at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

(b) A member of a cooperative does not have a vested property right resulting from any provision in the articles or bylaws, including provisions relating to management control, capital structure, distribution, entitlement or purpose or duration of the cooperative.

Section 43-46-102. (a) The articles of a cooperative shall be amended as follows:

(1) The board by majority vote shall pass a resolution stating the text of the proposed amendment. The text of the proposed amendment and an attached mail ballot, if the board has provided for a mail ballot in the resolution or alternative method approved by the board and stated in the resolution, shall be mailed or distributed with a regular or special meeting notice to each member. The notice shall designate the time and place of the meeting for the proposed amendment to be considered and voted on.

(2) If a quorum of the members is registered as being present or represented by alternative vote at the meeting, the proposed amendment is adopted:

(A) If approved by a majority of the votes cast; or

(B) For a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the amendment is approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(b) After an amendment has been adopted by the members, the amendment shall be signed by the chair, vice-chair, records officer, or assistant records officer and a copy of the amendment filed in the office of the secretary of state.

(c) A certificate shall be prepared stating:

(1) The vote and meeting of the board adopting a resolution of the proposed amendment;

(2) The notice given to members of the meeting at which the amendment was adopted;

(3) The quorum registered at the meeting; and

(4) The vote cast adopting the amendment.

(d) The certificate shall be signed by the chair, vice-chair, records officer or financial officer and filed with the records of the cooperative.

(e) A majority of directors may amend the articles if the cooperative does not have any members with voting rights.

Section 43-46-103. (a) A cooperative amending its articles of organization shall deliver to the secretary of state for filing articles of amendment

setting forth:

- (1) The name of the cooperative;
- (2) The text of each amendment adopted;
- (3) The date of each amendment's adoption;
- (4) If an amendment was duly adopted by the board of directors without member action, a statement to that effect and that member action was not required; and
- (5) If an amendment was duly adopted by the members, a statement to that effect.

Section 43-46-104. (a) A cooperative's board of directors may restate its articles at any time with or without member action.

(b) The restatement may include one (1) or more amendments to the articles. If the restatement includes an amendment requiring member approval, it shall be adopted as provided in § 43-46-102.

(c) If the board of directors submits a restatement for member action, the cooperative shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § 43-57-103. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(d) A cooperative restating its articles shall deliver to the secretary of state the restated articles, setting forth the name of the cooperative and the text of the restated articles, together with a certificate setting forth:

(1) Whether the restatement contains an amendment to the articles requiring member approval and, if it does not, that the board of directors adopted the restatement; or

(2) If the restatement contains an amendment to the articles requiring member approval, the information required by § 43-46-103.

(e) If the restatement contains an amendment to the articles, it shall be designated in the heading "Amended and Restated Articles".

(f) The restated articles must contain all the requirements of articles as set forth in § 43-42-101.

(g) Duly adopted and restated articles supersede the original articles and all prior amendments thereto.

(h) The secretary of state may certify restated articles as the articles currently in effect, without including the certificate information required by subsection (d).

Section 43-46-105. (a) A cooperative's articles may be amended without

action by the board of directors or members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute, if the articles after amendment contain only provisions required or permitted by § 43-42-101.

(b) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(1) The name of the cooperative;

(2) The text of each amendment approved by the court;

(3) The date of the court's order or decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) Members of a cooperative undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(d) This section does not apply after entry of a final decree in the reorganization proceedings, even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Section 43-46-106. An amendment to the articles does not affect a cause of action existing against or in favor of the cooperative, a proceeding to which the cooperative is a party or the existing rights of persons other than members of the cooperative. An amendment changing a cooperative's name does not abate a proceeding brought by or against the cooperative in its former name.

SECTION 10. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 47:

Section 43-47-101. Cooperatives created pursuant to this act shall be subject to the same fees and taxed in the same manner as nonprofit cooperative associations established pursuant to § 43-16-101, et seq.

SECTION 11. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 48:

Section 43-48-101. (a) In addition to the other powers listed in this section, unless the articles of organization provide otherwise, a cooperative as an agent or otherwise:

(1) May perform every act and thing necessary or proper to the conduct of the cooperative's business or the accomplishment of the purposes of the cooperative;

(2) Has other rights, powers, or privileges granted by the laws of this state to other cooperatives, except those that are inconsistent with the express provisions of this article; and



(3) Has the powers given in this section.

(b) A cooperative may buy, sell, or deal in its own products, the products of the cooperative's individual members, patrons or nonmembers, the products of another cooperative association, or of its members or patrons, or the products of another person or entity. A cooperative may negotiate the price at which the products the cooperative is selling may be sold.

(c) A cooperative may enter into or become a party to a contract or agreement for the cooperative or for the cooperative's individual members or patrons or between the cooperative and its members.

(d) A cooperative may purchase and hold, lease, mortgage, encumber, sell, exchange and convey as a legal entity real estate, buildings and personal property as the business of the cooperative may require including the sale or other disposition of assets required by the business of the cooperative as determined by the board.

(e) A cooperative may erect buildings or other structures or facilities on the cooperative's owned or leased property or on a right-of-way legally acquired by the cooperative.

(f) A cooperative may issue bonds or other evidence of indebtedness and may borrow money to finance the business of the cooperative.

(g) A cooperative may make advances to the cooperative's members or patrons on products delivered by the members or patrons to the cooperative.

(h) A cooperative may accept deposits of money from other cooperatives, associations or members from which it is constituted.

(j) A cooperative may loan or borrow money to or from individual members, cooperatives or associations from which it is constituted with security that it considers sufficient in dealing with the members, cooperatives, or associations.

(k) A cooperative may purchase, acquire, hold, or dispose of the ownership interests of another business entity whether organized under the laws of this state or another state and assume all rights, interests, privileges, responsibilities and obligations arising out of the ownership interests.

(l) A cooperative may acquire and hold ownership interests in another business entity organized under the laws of this state or another state of the United States, including a business entity organized:

(1) As a federation of associations;

(2) For the purpose of forming a district, state, or national marketing, sales or service agency; or

(3) For the purpose of acquiring marketing facilities at terminal or other markets in this state or other states.

(m) A cooperative may purchase, own, and hold ownership interests, including stock and other equity interests, memberships, interests in nonstock

capital, evidences of indebtedness of any domestic business entity when reasonably necessary or incidental to accomplish the purposes stated in the articles.

(n) A cooperative may exercise any and all fiduciary powers in relations with members, cooperatives, associations or business entities from which it is constituted.

(o) A cooperative may take, receive, and hold real and personal property, including the principal and interest of money or other funds and rights in a contract, in trust for any purpose not inconsistent with the purposes of the cooperative in its articles and may exercise fiduciary powers in relation to taking, receiving, and holding the real and personal property.

(p) Sue and be sued, complain and defend in its corporate name.

(q) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(r) Make and amend bylaws, not inconsistent with its articles of organization or with the laws of this state, for managing the business and regulating the affairs of the cooperative.

(s) Make donations for the public welfare or for charitable, scientific or educational purposes;

(t) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the cooperative;

(u) Procure insurance on the life of the directors, officers, and employees of the cooperative;

(v) Accept gifts; and

(w) Accept contributions under § 43-51-101.

SECTION 12. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 49:

Section 43-49-101. (a) A cooperative and its patron member or patron may make and execute a marketing contract, requiring the patron member or patron to sell a specified portion of the patron member's or patron's agricultural product or specified commodity produced from a certain area exclusively to or through the cooperative or facility established by the cooperative.

(b) If a sale is contracted to the cooperative, the sale shall transfer title to the product absolutely, except for a recorded lien or security interest, to the cooperative on delivery of the product or at another specified time if expressly provided in the contract. The contract may allow the cooperative to sell or resell the product of its patron member or patron with or without taking title to the product, and pay the resale price to the patron member or patron, after deducting all necessary selling, overhead and other costs and expenses, including other proper reserves and interest.

(c) A single term of a marketing contract shall not exceed ten (10) years, but a marketing contract may be made self-renewing for periods not exceeding

five (5) years each, subject to the right of either party to terminate by giving written notice of the termination during a period of the current term as specified in the contract.

(d) The bylaws or the marketing contract, or both, may set a specific sum as liquidated damages to be paid by the patron member or patron to the cooperative for breach of any provision of the marketing contract regarding the sale or delivery or withholding of a product and may provide that the member or patron shall pay the costs, premiums for bonds, expenses and fees if an action is brought on the contract by the cooperative. The remedies for breach of contract are valid and enforceable in the courts of this state. The provisions shall be enforced as liquidated damages and are not to be considered or regarded as a penalty.

(e) If there is a breach or threatened breach of a marketing contract by a patron member or patron, the cooperative is entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance of the contract. Pending the adjudication of the action after filing a certified complaint showing the breach or threatened breach and filing a sufficient bond, the cooperative is entitled to a temporary restraining order and preliminary injunction against the patron member or patron.

(f) Any person who knowingly induces or attempts to induce any member or patron of a cooperative organized under this article to breach a marketing contract with the cooperative, or who maliciously and knowingly spreads false reports about the finances or management thereof, shall be guilty of a Class B misdemeanor and subject to a fine only of not more than five hundred dollars (\$500), for each such offense; provided, that this section shall not apply to a bona fide creditor of such cooperative, or the agent or attorney of any such bona fide creditor, endeavoring to make collections of the indebtedness.

(g) In addition to the penalty provided in subsection (f) of this section, the person, corporation or other entity may be liable to the cooperative for civil damages for any violation of the provisions of subsection (f) of this section. Each violation shall constitute a separate offense and is subject to the penalties in this subsection and subsection (f) of this section.

Section 43-49-102. (a) A cooperative may, in lieu of paying or delivering to the state the unclaimed property specified in its report of unclaimed property, distribute the unclaimed property to a corporation or organization that is exempt from taxation. A cooperative making the election to distribute unclaimed property shall file with the secretary of state:

(1) A verified written explanation of the proof of claim of an owner establishing a right to receive the abandoned property;

(2) Any error in the presumption of abandonment;

(3) The name, address, and exemption number of the corporation or organization to which the property was or is to be distributed; and

(4) The approximate date of distribution.

(b) This subsection does not alter the procedure provided by law for cooperatives to report unclaimed property to the state and the requirement that

claims of owners are made to the cooperatives for a period following the publication of lists of abandoned property.

(c) The right of an owner to unclaimed property held by a cooperative is extinguished when the property is disbursed by the cooperative to a tax-exempt organization in accordance with this section.

SECTION 13. Tennessee Code Annotated, Title 43, is amended by adding the following as new chapter 50:

Section 43-50-101. (a) Except as provided in subsection (b), the validity of a cooperative's action may not be challenged on the ground that the cooperative lacks or lacked the power to act.

(b) A cooperative power to act may be challenged in a proceeding by:

(1) A member against the cooperative to enjoin the act;

(2) The cooperative directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee or agent of the cooperative; or

(3) The attorney general under § 43-69-206.

(c) In a member's proceeding under subdivision (b)(1) to enjoin an unauthorized cooperative act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the cooperative or another party because of enjoining the unauthorized act.

SECTION 14. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 51:

Section 43-51-101. (a) The authorized amount and divisions of patron membership interests and nonpatron membership interests may be increased or decreased or established or altered, in accordance with the restrictions in this article by amending the articles at a regular members' meeting or at a special members' meeting called for the purpose of the amendment.

(b) Authorized membership interests may be issued pursuant to contribution agreements containing such terms and conditions prescribed in the articles or bylaws, or if authorized in the articles or bylaws as determined by the board. The cooperative shall disclose to any person or entity acquiring membership interests to be issued by the cooperative, the organization, capital structure and known business prospects and risks of the cooperative, the nature of the governance and financial rights of the membership interest being acquired and of other classes of membership and membership interests. The cooperative shall notify all members of the membership interests being offered by the cooperative. A membership interest may not be issued until the subscription price of the membership interest has been paid for in cash or a cash equivalent or property with the value of the property to be contributed approved by the board.

(c) The patron membership interests collectively shall have not less than fifteen percent (15%) of the cooperative's financial rights to profit allocations and distributions.

(d) After issuance by the cooperative, membership interests in a cooperative may only be sold or transferred in accordance with the provisions of §43-54-102 and § 43-54-103, in each instance, with the approval of the board.

(e) The cooperative may solicit and issue nonpatron membership interests on terms and conditions determined by the board and disclosed in the articles, bylaws or by separate disclosure to the members. Each member acquiring nonpatron membership interests shall sign a member control agreement or agree to the conditions of the bylaws, either of which shall describe the rights and obligations of the member as it relates to the nonpatron membership interests, the financial and governance rights, the transferability of the nonpatron membership interests, the division and allocations of profits and losses among the membership interests and membership classes, and financial rights upon liquidation. If the bylaws do not otherwise provide for the allocation of the profits and losses between patron membership interests and nonpatron membership interests, then the allocation of profits and losses among nonpatron membership interests individually and patron membership interests collectively shall be allocated on the basis of the value of contributions to capital made according to the patron membership interests collectively and the nonpatron membership interests individually to the extent the contributions have been accepted by the cooperative. Distributions of cash or other assets of the cooperative shall be allocated among the membership interests as provided in the articles and bylaws, subject to the provisions of this article. If not otherwise provided, distributions shall be made on the basis of value of the capital contributions of the patron membership interests collectively and the nonpatron membership interests to the extent the contributions have been accepted by the cooperative.

(f) The bylaws may provide that the cooperative or the patron members, individually or collectively, have the first privilege of purchasing the membership interests of any class of membership interests offered for sale. The first privilege to purchase membership interests may be satisfied by notice to other members that the membership interests are for sale and a procedure by which members may proceed to attempt to purchase and acquire the membership interests. A membership interest acquired by the cooperative may be held to be reissued or may be retired and cancelled.

(g) Subject to the provisions in the bylaws, a member may dissent from and obtain payment for the fair value of the member's nonpatron membership interests in the cooperative if the articles or bylaws are amended in a manner that materially and adversely affects the rights and preferences of the nonpatron membership interests of the dissenting member. The dissenting member shall file a notice of intent to demand fair value of the membership interest with the records officer of the cooperative within thirty (30) days after the amendment of the bylaws and notice of the amendment to members, otherwise the right of the dissenting member to demand payment of fair value for the membership interest is deemed to be waived. If a proposed amendment of the articles or bylaws shall be approved by the members, a member who is entitled to dissent and who wishes to exercise dissenter's rights shall file a notice to demand fair value of the membership interest with the records officer of the cooperative before the vote on the proposed action and shall not vote in favor of the proposed action, otherwise the right to demand fair value for the membership interest by the dissenting member is deemed waived. After receipt of the dissenting member's demand notice and approval of the amendment, the cooperative has sixty (60) days to rescind the amendment or otherwise the cooperative shall remit the fair value for the one (1) member's interest to the dissenting member by one hundred eighty

(180) days after receipt of the notice. Upon receipt of the fair value for the membership interest, the member has no further member rights in the cooperative.

SECTION 15. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 52:

Section 43-52-101. (a) A member always has the power to terminate membership by withdrawing at any time. Unless otherwise provided in Chapters 38-70 of this title, the articles, or the bylaws, any other withdrawal or termination shall be deemed wrongful.

(b) Unless otherwise provided in the articles, a member may not be expelled.

(c) If, for any reason, the continued membership of a member is terminated:

(1) If the existence and business of the cooperative is continued, then the member whose membership has terminated loses all governance rights and will be considered merely an assignee of the financial rights, owned before the termination of membership; or

(2) Unless the articles or bylaws provide otherwise, if the existence and business of the cooperative is not continued, the member whose continued membership has terminated, except through wrongful withdrawal or wrongful termination, retains all governance rights owned before the termination of the membership and may exercise those rights through the winding up and termination of the cooperative.

(d) If a member withdraws in contravention of the articles or bylaws, then:

(1) The member who has wrongfully withdrawn forfeits governance rights in the winding up and termination process or in the continued business; and

(2) The member who has wrongfully withdrawn is liable to all the other members and to the cooperative to the extent damaged, including the loss of foregone profits, by the wrongful withdrawal. Such damages may be offset against any amount to be paid to the wrongfully withdrawing or terminating by the cooperative.

(e) If the business and existence of the cooperative are continued, any withdrawing or terminating member, whether such withdrawal or termination was wrongful or otherwise, is entitled to receive, subject to the provisions of subsection (d) above, the lesser of the fair market value of the withdrawing or terminating member's interest determined on a going concern basis or the fair market value of the withdrawing member's interest determined on a liquidated basis.

(f) Except as provided in subsection (d), if the business and existence of the cooperative are not continued, then any withdrawing or terminating member, whether such withdrawal or termination was wrongful or otherwise, is entitled to receive that member's distribution under § 43-69-401.

(g) Except as provided in the articles or bylaws, any amount to which a withdrawing or terminating member is entitled under subsection (e) or (f) shall be paid to such withdrawing or terminating member within six (6) months of the determination of such amount.

(h) Notwithstanding other provisions in this section, the articles or bylaws may establish the amount to be paid a withdrawing or terminating member or a method for establishing such amount and may also establish the terms of payment of such amount. Such established amount, or the method of determining such amount, and such established terms of payment shall control.

SECTION 16. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 53:

Section 43-53-101. (a)(1) Except as provided in subsections (e) and (f), a member, holder of financial interest, director, officer, employee or other agent of a cooperative does not have any personal obligation and is not otherwise personally liable for the acts, debts, liabilities, or obligations of the cooperative whether such arise in contract, tort or otherwise.

(2) A member, holder of financial interest, director, officer, employee or other agent of a cooperative does not have any personal obligation and is not otherwise personally liable for the acts or omissions of any other member, officer, director, employee or other agent of the cooperative.

(3) Notwithstanding the provisions of subdivisions (a)(1) and (a)(2), a member, holder of financial interest, director, officer, employee or other agent may become personally liable in contract, tort or otherwise by reason of such person's own acts or conduct.

(b) The limited liability described in subsection (a) continues in full force regardless of any dissolution, winding up, and termination of a cooperative.

(c) A member, holder of financial interest, director, or officer of a cooperative is not a proper party to a proceeding by or against a cooperative except:

(1) Where the object of the proceeding is to enforce such person's right against or liability to the cooperative.

(2) In a derivative action brought pursuant to Chapters 38-70 of this title, the articles or the bylaws; or

(3) Where the proceeding asserts personal liability of such member, holder of financial interest, director or officer described in subdivision (a)(3).

(d) Notwithstanding any other provision of Chapters 38-70 of this title to the contrary, each person, member, or employee required to collect or truthfully account for, any pay over to the Department of Revenue of any tax collected from the customers of a cooperative shall be personally liable for such taxes in the manner as responsible persons of a corporation under the provisions of § 67-1-1443.

(e) The failure of a cooperative to observe the usual company formalities

or requirements relating to the exercise of its cooperative powers or management of its business is not a ground for imposing personal liability upon the members, directors, officers, employees or other agents of the cooperative.

(f)(1) Notwithstanding any provision to the contrary, the articles may provide that one (1) or more specifically identified members, as named in the articles, shall be personally liable for all of the debts, obligations and liabilities of the cooperative and, if so, each such specifically identified member shall be liable to the same extent as a general partner in a general partnership; provided, that:

(A) In order to be effective, each member so identified must sign the articles, or an amendment to the articles containing this provision; and

(B) Each member shall continue to be personally liable for debts, obligations and liabilities of the cooperative until the articles are amended to strike such member's name, but the amendment must be signed by the chief manager or secretary and any remaining members who continue to be identified in the articles as being personally liable for the debts, obligations and liabilities of the cooperative.

(2) A member who is identified in the articles as being personally liable has the power to withdraw from the cooperative by filing an amendment to the articles stating that such member has withdrawn from the cooperative and shall not be liable for any future debts, obligations and liabilities of the cooperative; provided, that such an amendment to the articles shall be effective immediately except with respect to parties that have reasonably relied upon the articles naming such person as individually liable for the debts, obligations and liabilities of the cooperative.

(3) An amendment to the articles filed pursuant to subdivisions (f)(1) and (2) is not effective against such parties reasonably relying upon such articles until the passage of ninety (90) days from the filing of the amendment to the articles. Notwithstanding the preceding, such member or former member will continue to be liable for all debts and obligations of the cooperative incurred by the cooperative while such member assumed liability.

SECTION 17. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 54:

Section 43-54-101. (a) Except as provided in subsection (c), a member's financial rights are transferable in whole or in part.

(b) An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a member's financial rights does not dissolve the cooperative and does not entitle or empower the assignee to become a member, to cause a dissolution, to exercise any governance rights, or, except as specifically provided by Chapters 38-70 of this title, to receive any notices from the cooperative, or to cause dissolution. The assignment may not allow the assignee to control the member's exercise of governance rights, and any attempt to do so shall be void.



(c)(1) A restriction on the assignment of financial rights may be imposed in the articles, in the bylaws, by a written resolution adopted by the members, or by a written agreement among, or other written action by, members, or among them and the cooperative.

(2) A restriction on the assignment of financial rights referenced in subdivision (c)(1) that is not manifestly unreasonable under the circumstances is enforceable against the owner of the restricted financial rights. A written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted in the articles or bylaws may be enforced against a successor or transferee of the owner of the restricted financial rights, including a pledge or a legal representative, whether or not such successor or transferee of the owner had actual notice thereof. Unless noted in the articles or bylaws, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.

Section 43-54-102. (a) A member may assign the member's full membership interest only by assigning all of the member's governance rights coupled with an assignment to the same assignee of all the member's financial rights. A member's governance rights are assignable only as provided in this section. A member or holder of a financial right has no power to assign all or any part of the member's membership interest or financial rights, except as provided in § 43-54-101 and this section.

(b)(1) Except as otherwise provided in the articles or the bylaws, a member may, without the consent of any other member, assign governance rights to another member.

(2)(A) Except as provided in subdivisions (b)(2)(B) and (C), any other assignment of any governance rights is effective only if all the directors, other than the director who is also a member seeking to make the assignment, approve the assignment by unanimous consent or otherwise if the articles or bylaws so permit. The consent may be evidenced in any manner specified in the articles or bylaws, but in the absence of such specification, consent shall be evidenced by a written instrument, dated and signed by such person. The giving of consent is at the discretion of the consenting party and may be unreasonably withheld.

(B) If the articles or bylaws so provide, the directors who are members may approve, by a majority or greater in number of the non-assigning directors who are members, the assignment of governance rights to a non-member. In the event there are no non-assigning governors who are members, the assignment must be approved by unanimous consent of the governors or, if the articles or bylaws so permit, the assignment shall be approved by at least a majority vote of the members exclusive of the member seeking to make the assignment.

(C) If permitted in the articles or bylaws, the governance rights associated with membership interests or classes of membership interests may be assigned without the consent of the members or the directors who are members.

(c) When an assignment of governance rights is effective under subsection (b):

(1) The assignee becomes a member, if not already a member;

(2) An assignee who has become a member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities, or a member under the articles, any bylaws and Chapters 38-70 of this title.

(d) When an assignment is effective under subsection (a):

(1) The assignee is liable for any obligations of the assignor existing at the time of transfer, except to the extent that, at the time the assignee became a member, the liability was unknown to the assignee, and could not be ascertained from the required records of the cooperative.

(2) Notwithstanding subdivision (d)(1), the assignee shall not be liable for the obligations of the assignor under § 43-66-101; and

(3) The assignor is not released from liability to the cooperative for obligations of the assignor existing at the time of transfer except as provided in subsection (d)(1).

(e) Unless otherwise provided in the articles or bylaws, the pledge of, or granting a security interest, lien or other encumbrance in or against, any or all of the membership interest of a member is not an assignment and shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

(f) Consequences of Ineffective Assignment. If any purported or attempted assignment of governance rights is ineffective for failure to obtain the consent required in subsection (b):

(1) The purported or attempted assignment is ineffective in its entirety; and

(2) Any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void.

Section 43-54-103. In addition to restrictions set forth in this chapter, restrictions on the assignment of governance rights may be imposed in accordance with the procedures and under the same conditions as stated in § 43-54-101(c) for restricting the assignment of financial rights.

Section 43-54-104. Any permissible assignment of financial rights under § 43-54-101 and of governance rights under § 43-54-102 will be effective as to and binding upon the cooperative only when the assignee's name, address, social security or taxpayer identification number and the nature and extent of the assignment are reflected in the required records of the cooperative.

Section 43-54-105. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge such person's financial

rights with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of such person's financial rights under § 43-54-101. This section does not deprive any member or assignee of financial rights of the benefit of any exemption laws applicable to the membership interest. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

SECTION 18. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 55:

Section 43-55-101. (a) If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, or the court places the individual in bankruptcy, the member's executor, administrator, guardian, conservator, trustee, or other legal representative, except as otherwise provided in the articles or bylaws, may exercise all of the member's rights, except voting rights, for the purpose of settling the estate or administering the member's property. If a member is a cooperative, trust, or other entity and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the powers of that member, except as otherwise provided in the articles or bylaws, may be exercised by its legal representative or successor, except the interest shall be a non-voting interest.

(b) If an event referred to in subsection (a) causes the termination of a member's interest, then:

(1) As provided in § 43-52-101(c), the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership; and

(2) The rights to be exercised by the legal representative of the successor will be limited accordingly.

SECTION 19. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 56:

Section 43-56-101. (a) Unless otherwise specifically provided in the articles or bylaws, members or parties, other than the cooperative, to a contribution agreement or a contribution allowance agreement shall not have preemptive rights. If the articles or bylaws provide for the possibility of preemptive rights, such rights shall be granted on the terms and conditions prescribed in the articles or bylaws to provide a fair and reasonable opportunity to exercise the rights to acquire additional proportional interests.

(b) A preemptive right is the right of a member to make contributions of a certain amount or to make a contribution allowance agreement specifying future contributions of a certain amount before the cooperative may accept new contributions from other persons or to make contribution allowance agreements with other persons.

(c) No preemptive rights arise as to contributions to be accepted from others or as to contribution allowance agreements to be made with others when the contribution is to be made:

(1) In a form other than money;

(2) Reflected pursuant to a plan of merger or exchange;

(3) Reflected pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote;

(4) Pursuant to a previously made contribution allowance agreement;  
or

(5) Reflected pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.

SECTION 20. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 57:

Section 43-57-101. (a) Regular members' meetings shall be held annually at a time determined by the board, unless otherwise provided for in the bylaws.

(b) The regular members' meeting shall be held at the principal place of business of the cooperative or at another conveniently located place as determined by the bylaws or the board.

(c) The officers shall submit reports to the members at the regular members' meeting covering the business of the cooperative for the previous fiscal year that show the condition of the cooperative at the close of the fiscal year.

(d) All directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws, except for directors elected at district or unit meetings.

(e) The cooperative shall give notice of regular members' meetings by mailing the regular members' meeting notice to each member at the member's last known post office address or by other notification approved by the board and agreed to by the members. The notice must contain the date, time, and place of the meeting, and any other information required by this section. The regular members' meeting notice shall be published or otherwise given by approved method at least two (2) weeks before the date of the meeting or mailed at least fifteen (15) days before the date of the meeting.

Section 43-57-102. (a) Special members' meetings of the members may be called by:

(1) A majority vote of the board; or

(2) The written petition of at least twenty percent (20%) of the patron members, twenty percent (20%) of the nonpatron members or twenty percent (20%) of all members collectively are submitted to the chair.

(b) The cooperative shall give notice of a special members' meeting by mailing the special members' meeting notice to each member personally at the person's last known post office address or an alternative method approved by the board and the member individually or the members generally. For a member that

is an entity, notice mailed or delivered by an alternative method shall be to an officer of the entity. The special members' meeting notice shall state the time, place, and purpose of the special members' meeting. The special members' meeting notice shall be issued within ten (10) days from and after the date of the presentation of a members' petition, and the special members' meeting shall be held within thirty (30) days after the date of the presentation of the members' petition.

Section 43-57-103. (a) Except as otherwise provided in this chapter or in the articles, written notice to all meetings of members must be given to every member entitled to vote on the matters to be considered, unless:

(1) The meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment; or

(2) The following have been mailed by first class, certified or registered mail to a member at the address in the cooperative records and returned undeliverable:

(A) Two (2) consecutive meeting notices; and

(B) All payments of distributions for the greater of a twelve-month period or two (2) distributions;

(C) An action or meeting that is taken or held without notice under the subdivision (a)(2) has the same force and effect as if notice was given. If the member delivers a written notice of the member's current address to the cooperative, the notice requirement is reinstated.

(3) Unless otherwise provided in the articles or bylaws, the record date for the determination of the owners of membership interests entitled to notice of and to vote at any meeting of members is the close of business and the date before the first notice is sent to the members.

(b) The notice must contain the date, time and place of the meeting, and any other information required by this chapter. In the case of a meeting, other than the required annual meeting of the board of directors, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles or bylaws or considered necessary or desirable by the person or persons calling the meeting.

(c) A certificate of the secretary or other person giving notice that the notice required by this section has been given, in the absence of fraud, shall be prima facie evidence of the facts stated therein.

(d) Notwithstanding provisions in the articles or bylaws to the contrary, all members and parties to contribution agreements and/or contribution allowance agreements shall be entitled to receive notices of the annual meetings of the members of a board-managed cooperative and notices of all meetings of a cooperative called for the purpose of considering any of the following actions:

(1) Dissolution;

(2) Liquidation;

(3) Sale of all or substantially all of the assets of the cooperative outside the ordinary course of business; or

(4) Merger.

The failure of the cooperative to properly notify the parties not entitled to vote on a matter shall not invalidate or void any action described above taken at such meeting.

Section 43-57-104. (a) After mailing special or regular members' meeting notices or otherwise delivering the notices, the cooperative shall execute a certificate containing the date of mailing or delivery of the notice and a statement that the special or regular members' meeting notices were mailed or delivered as prescribed by law.

(b) The certificate shall be made a part of the record of the meeting.

Section 43-57-105. Failure of a member to receive a special or regular members' meeting notice does not invalidate an action that is taken by the members at a members' meeting.

Section 43-57-106. (a) A member may waive any notice required by this section. Except as otherwise provided herein, a waiver of notice by a member entitled to notice is effective, whether given before or after the meeting or other balloting, if such notice is given in writing, signed by the member entitled to the notice, and filed with the minutes or corporate records.

(b) A member's attendance at or participation in a meeting waives any required notice to the member of the meeting unless the member at the beginning of the meeting or (promptly upon the member's arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting. The secretary is required to note the objection in the minutes of the meeting.

SECTION 21. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 58:

Section 43-58-101. (a) Unless the articles provide otherwise, any action required or permitted to be taken at a meeting of the members may be taken without a meeting by action on written consent as provided in § 43-58-102 or on recommendation of the board of directors as provided in § 43-58-103. Any action taken pursuant to § 43-58-102 or § 43-58-103 has the effect of a meeting and vote and may be described as such in any document. Any requirement in Chapters 38-70 of this title for action at a meeting will be satisfied by an action taken in accordance with § 43-58-102 or § 43-58-103.

(b) If Chapters 38-70 of this title, the articles or bylaws require that notice of proposed action be given to members and the action is to be taken by members pursuant to § 43-58-102 or § 43-58-103, then the cooperative must give its members who would not be entitled to vote on such matter a written notice of the proposed action at least ten (10) days before action is taken on written consent or at the same time notice is given to the members entitled to vote under § 43-58-103. The notice must contain or be accompanied by the same material that would have been required to be sent to members in a notice of meeting at which the proposed action would have been submitted to the members for action.

Section 43-58-102. (a) To take action on written consent:

(1) A written waiver of acting at a meeting must be signed by all members, or such smaller number or percentage interest as provided for in the articles or bylaws (but not less than a majority in voting power); and

(2) A written consent must be signed by members who own membership interests with voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members are present.

(b) The action must be evidenced by one (1) or more instruments evidencing the waiver and consent, which shall be delivered to the secretary for inclusion in the records of the cooperative. All such instruments may be signed in counterparts.

(c) If not otherwise determined under § 43-59-108, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a).

(d) Unless otherwise provided in the articles or the bylaws, the action on written consent is effective when the last required member signs the waiver and written consent, unless a different effective time is provided in the instrument evidencing the written consent itself.

Section 43-58-103. (a) Except with respect to dissolution, liquidation or merger, the board of directors may, acting on such board's initiative, make a proposal to the members to take an action without a meeting. All members entitled to vote shall be given written notice of such proposal. Such notice shall require a written response within a specified time but not less than thirty (30) days from the effective date of the notice and shall contain the recommendation of the board of directors. The failure of a member to respond within the time specified in the notice shall constitute a vote in favor of the recommendation of the board of directors, as the case may be. The notice shall contain a statement concerning the voting effect of the failure of a member to timely respond to the proposal. Except as provided in subsection (b), if the voting power of the members responding in favor of the recommendation as to the proposal, combined with the voting power of the members failing to respond, is equal to the voting power that would be required to take the same action at a meeting of the members at which all members are present, then such proposal shall become the action of the members of the cooperative effective as of the expiration of the notice period.

(b) Notwithstanding the provisions of subsection (a), if members with twenty percent (20%) of the aggregate voting power of the cooperative or the class, series, or group of the members entitled to vote on the specific matter notify the secretary in writing within fifteen (15) days of the giving of the notice that a meeting should be called to consider one (1) or more of the matters on which the board of directors has made recommendation, the vote may not be taken as provided in this section, but a meeting of the members shall be called to consider and to take action on such matter.

SECTION 22. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 59:

Section 43-59-101. (a) The quorum for a members' meeting to transact business shall be:

(1) Ten percent (10%) of the total number of members for a cooperative with five hundred (500) or less members; or

(2) Fifty (50) members for cooperatives with more than five hundred (500) members.

(b) In determining a quorum at a meeting, on a question submitted to a vote by mail or an alternative method, members present in person or represented by mail vote or the alternative voting method shall be counted. The attendance of a sufficient number of members to constitute a quorum shall be established by a registration of the members of the cooperative present at the meeting. The registration shall be verified by the chair or the records officer of the cooperative and shall be reported in the minutes of the meeting.

(c) An action by a cooperative is not valid or legal in the absence of a quorum at the meeting at which the action was taken.

Section 43-59-102. (a) The members shall take action by the affirmative vote of the owners of the greater of:

(1) A majority of the voting power of the membership interests present and entitled to vote on that item of business in a meeting in which a quorum is present; or

(2) A majority of the voting power that would constitute a quorum for the transaction of business at the meeting, except where this chapter, the articles of organization, or a member control agreement, requires a larger proportion. If the articles, bylaws, or a member control agreement require a larger proportion than is required by this chapter for a particular action, the articles, bylaws, or the member control agreement control.

(b) In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, bylaws, a member control agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests present of that class or series; or of the total outstanding membership interests of that class or series, as the proportion required pursuant to subsection (a), unless the articles, bylaws, or the member control agreement require a larger proportion. Unless otherwise stated in the articles, bylaws, or a member control agreement, in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under § 43-58-101.

Section 43-59-103. Voting shall not be by proxy except as provided in § 43-59-104(d).

Section 43-59-104. (a) A patron member of a cooperative is only entitled to one (1) vote on an issue to be voted upon by members holding patron



membership interests, except that a patron member of a cooperative described in § 43-59-105 may be entitled to more than one (1) vote as provided in that section. On any matter of the cooperative, the entire patron members voting power shall be voted collectively based upon the vote of the majority of patron members' voting on the issue. A nonpatron member has the voting rights in accordance to his nonpatron membership interests as granted in the bylaws, subject to the provisions of this article.

(b) A member or delegate may exercise voting rights on any matter that is before the members as prescribed in the articles or bylaws at a members' meeting from the time the member or delegate arrives at the members' meeting, unless the articles or bylaws specify an earlier and specific time for closing the right to vote.

(c) A member's vote at a members' meeting shall be in person or by mail if a mail vote is authorized by the board or by alternative method if authorized by the board, and not by proxy except as provided in subsection (d) of this section.

(d) The following shall apply to members represented by delegates:

(1) A cooperative may provide in the articles or bylaws that units or districts of members are entitled to be represented at members' meetings by delegates chosen by the members of the unit or district. The delegates may vote on matters at the members' meeting in the same manner as a member. The delegates may only exercise the voting rights on a basis and with the number of votes as prescribed in the articles or bylaws;

(2) If the approval of a certain portion of the members is required for adoption of amendments, a dissolution, a merger, a consolidation, or a sale of assets, the votes of delegates shall be counted as votes by the members represented by the delegate;

(3) Patron members may be represented by the proxy of other patron members;

(4) Nonpatron members may be represented by proxy if authorized in the bylaws.

(e) The following shall apply to absentee ballots:

(1) A member who is or will be absent from a members' meeting may vote by mail or by an approved alternative method on the ballot prescribed in this subsection on any motion, resolution or amendment that the board submits for vote by mail or alternative method to the members;

(2) The ballot shall be in the form prescribed by the board and contain:

(A) The exact text of the proposed motion, resolution or amendment to be acted on at the meeting; and

(B) The text of the motion, resolution or amendment for which the member may indicate an affirmative or negative vote.

(3) The member shall express a choice by marking an appropriate choice on the ballot and mail, deliver or otherwise submit the ballot to the cooperative in a plain, sealed envelope inside another envelope bearing the member's name or by an alternative method approved by the board;

(4) A properly executed ballot shall be accepted by the board and counted as the vote of the absent member at the meeting.

Section 43-59-105. (a) A cooperative that is constituted entirely or partially of other cooperatives or associations may authorize by the articles or the bylaws for affiliated cooperative patron members to have an additional vote for:

(1) A stipulated amount of business transacted between the patron member cooperative and the central cooperative organization;

(2) A stipulated number of patron members in the member cooperative;

(3) A certain stipulated amount of equity allocated to or held by the patron member cooperative in the cooperative central organization; or

(4) A combination of methods in subdivisions (1) through (3) of this subsection.

(b) A cooperative that is organized into units or districts of patron members, may, by the articles or the bylaws, authorize the delegates elected by its patron members or, have an additional vote for:

(1) A stipulated amount of business transacted between the patron members in the units or districts and the cooperative;

(2) A certain stipulated amount of equity allocated to or held by the patron members of the units or districts of the cooperative; or

(3) A combination of methods in subdivisions (1) and (2) of this subsection.

Section 43-59-106. (a) A written agreement among persons who are then members, including a sole member, or who have signed subscription or contribution agreements, relating to the control of any phase of the business and affairs of the cooperative, its liquidation, dissolution and termination, or the relations among members or persons who have signed subscription or contribution agreements is valid as provided in subsection (b). Wherever this chapter provides that a particular result may or must be obtained through a provision in the articles of organization or bylaws, the same result can be accomplished through a member control agreement valid under this section or through a procedure established by a member control agreement valid under this section.

(b) Other than patron member voting control under § 43-59-104 and patron member allocation and distribution provisions under §§ 43-65-101 and 43-65-102, a written agreement among persons described in subsection (a) that relates to the control of or the liquidation, dissolution and termination of the cooperative, the relations among them, or any phase of the business and affairs

of the cooperative, including, without limitation, the management of its business, the declaration and payment of distributions, the sharing of profits and losses, the election of directors, the employment of members by the cooperative, or the arbitration of disputes, is valid, if the agreement is signed by all persons who are then the members of the cooperative, whether or not the members all have voting power, and all those who have signed contribution agreements, regardless of whether those signatories will, when members, have voting power.

(c) This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among members or between the members and the cooperative with respect to any of the matters described.

(d) Any assignee of any member's financial rights may not be a party to an agreement under subsection (a), unless that assignee is also a member or person or entity bound by a binding contribution agreement at the time the agreement is entered into.

(e) Unless otherwise provided in the articles, bylaws or the member control agreement, the member control agreement will not terminate if the cooperative is combined into a new cooperative pursuant to merger whether by a merger in dissolution or otherwise. Any other termination of the cooperative's existence will automatically terminate the member control agreement.

43-59-107. A cooperative that holds ownership interests of another business entity may, by direction of the cooperative's board, elect or appoint a person to represent the cooperative at a meeting of the business entity. The representative has authority to represent the cooperative and may cast the cooperative's vote at the business entity's meeting.

Section 43-59-108. (a) The articles or bylaws may fix a date ("record date") for the determination of the owners of membership interests entitled to notice of and entitled to vote at a meeting, to demand a meeting, to vote or to take any other action. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members or to take such other action on the subject of this notice. If no date is so fixed, the record date is the close of business the business day before the first notice is sent.

(b) The secretary of the cooperative shall prepare a list of the names of all members who are entitled to vote at the meeting of the members and show the address of and membership interest(s) held by each member as reflected in the records of the cooperative.

(c) The list must be available for inspection and copying by any member, beginning two (2) business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the cooperative's principal executive office or at a place identified in the meeting notice in the city where the meeting will be held. A violation of this provision entitles any member seeking to inspect such list to equitable relief under § 43-63-105.

Section 43-59-109. (a) A cooperative may group members and patron members in districts, units or another basis if and as authorized in its articles and bylaws which may include authorization for the board to determine the groupings.

(b) The board may do things necessary to implement the use of districts or units including setting the time and place and prescribing the rules of conduct

for holding meetings by districts or units to elect delegates to members' meetings.

Section 43-59-110. (a) A member who knowingly, intentionally, or repeatedly violates a provision of the articles, bylaws, member control agreement or marketing contract with the cooperative, may be required by the board to surrender the financial rights of membership interest of any class owned by the member.

(b) The cooperative shall refund to the member for the surrendered financial rights of membership interest the lesser of the book value or market value of the financial right of the membership interest payable in not more than seven (7) years from the date of surrender or the board may transfer all of any patron member's financial rights to a class of financial rights held by members who are not patron members, or to a certificate of interest which carries liquidation rights on par with membership interests and is redeemed within seven (7) years after the transfer as provided in the certificate.

(c) Membership interests required to be surrendered may be reissued or be retired and cancelled by the board.

(d) A member who knowingly, intentionally or repeatedly violates a provision of the articles, bylaws, member control agreement, or a marketing contract, may be required by the board to surrender voting power in the cooperative.

Section 43-59-111. A member is not, merely on the account of that status, personally liable for the acts, debts, liabilities, or obligations of a cooperative. A member is liable for any unpaid subscription for the membership interest, unpaid membership fees, or a debt for which the member has separately contracted with the cooperative.

SECTION 23. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 60:

Section 43-60-101. (a) A cooperative shall keep at its principal executive office, or at another place or places within the United States determined by the board:

(1) A current list of the full names and last-known business, residence or mailing addresses of the chief manager, secretary and each member and governor;

(2) A current list of the full name and last-known business, residence, or mailing address of each assignee of financial rights and a description of the rights assigned;

(3) A copy of the articles and all amendments to the articles;

(4) Copies of the currently effective bylaws and any agreements concerning classes or series of membership interests;

(5) Copies of the cooperative's federal, state, and local income tax returns and reports, if any, for the three (3) most recent years;

(6) Financial statements required by § 43-60-201 and accounting

records of the cooperative;

(7) Records of all proceedings of members, if any;

(8) Any written consents obtained from members under Chapters 38-70 of this title;

(9) Records of all proceedings of the board of directors for the last three (3) years;

(10) A statement of all contributions accepted under § 43-51-101, the identity of the contribution and the agreed value of the contribution;

(11) A copy of all contribution agreements and contribution allowance agreements; and

(12) A copy of the cooperative's most recent annual report delivered to the secretary of state under § 43-60-202.

Section 43-60-102. (a) A member of the cooperative is entitled to inspect and copy, during regular business hours at the cooperative's principal executive office, any of the records of the cooperative described in § 43-60-101, if the member gives the cooperative written notice of such demand at least five (5) business days before the date on which the member wishes to inspect and copy.

(b) The right of inspection granted by this section may not be abolished or limited by a cooperative's articles or bylaws.

(c) This section does not affect:

(1) The right of a member to inspect records, if the member is in litigation with the cooperative, to the same extent as any other litigant; or

(2) The power of a court to compel the production of records for examination.

Section 43-60-103. (a) A member's agent or attorney has the same inspection and copying rights as the member such agent or attorney represents.

(b) The right to copy records under § 43-60-102 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The cooperative may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

Section 43-60-104. (a) If a cooperative does not allow a member who complies with § 43-60-102(a) to inspect and copy any records required by that subsection to be available for inspection, a court in the county where the cooperative's principal executive office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the cooperative's expense upon application of the member.

(b) If the court orders inspection and copying of the records demanded, it shall also order the cooperatives to pay the member's costs (including reasonable counsel fees) incurred to obtain the order if the member proves that the cooperative refused inspection without a reasonable basis for doubt about the right of the member to inspect the records demanded.

(c) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

Section 43-60-201. (a) A cooperative shall prepare financial statements at least annually, which may be consolidated or combined statements of the cooperative and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the reporting period and an income statement for that period. If financial statements are prepared for the cooperative on the basis of generally accepted accounting principles, the financial statements must also be prepared on that basis. If requested in writing by any member or holder of financial rights, the cooperative shall furnish such statements to such person as set out in subsection (c).

(b) If the annual financial statements are reported under by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by a statement of the chief manager or the person responsible for the cooperative's accounting records:

(1) Stating such person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis for accounting consistent with the statements prepared for the preceding year.

(c) A cooperative shall mail the annual financial statements to each requesting member or holder of financial rights, within one (1) month after notice of the request; provided, that with respect to the financial statements for the most recently completed fiscal year, the statements shall be mailed to the member within four (4) months after the close of the fiscal year.

Section 43-60-202. (a) Each domestic cooperative shall deliver to the secretary of state for filing an annual report that sets forth:

(1) The name of the cooperative and the jurisdiction under whose law it is incorporated;

(2) The street address and zip code of its registered office and the name of its registered agent at that office in this state;

(3) The street address, including the zip code, of its principal executive office;

(4) The names and business addresses, including the zip code, of its board;

(5) The names and business addresses, including the zip code, of its managers (or equivalent);

(6) The federal employer identification number (FEIN) of the cooperative, or if such number has not been obtained, a representation that it has been applied for; and

(7) The number of members of the cooperative at the date of filing;

(b) Information in the annual report shall be current as of the date the annual report is executed on behalf of the cooperative;

(c) Every cooperative shall file the annual report with the secretary of state on or before the first day of the fourth month following the end of the close of the cooperative's fiscal year.

SECTION 24. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 61:

Section 43-61-101. (a) All powers shall be exercised by or under the authority of, and the business and affairs of the cooperative shall be managed by or under the direction of the board of directors, subject to the provisions of subsection (b) and any limitations set forth in the articles or bylaws agreement. A cooperative shall be board-managed, as designated in its articles. Unless otherwise provided in the articles or bylaws, each director shall have equal voting power per capita with each other director.

(b) For convenience, one (1) or more officers, members or directors may be designated in the articles as persons authorized to execute instruments transferring real property held in the name of the cooperative and may set forth any limitations on such authority. This designation, however, in the absence of a clear statement that the named person(s) are the only person(s) authorized to execute instruments transferring real property, does not imply that other members, officers or directors do not have the authority to execute such instruments under § 43-61-102. A grant of authority contained in the current articles is conclusive in favor of a person who gives value without knowledge to the contrary.

Section 43-61-102. (a) Unless the articles provide otherwise, no member is an agent of the cooperative for the purpose of its business, other than a member designated by the board of directors, including the execution in the cooperative name of any instrument, for apparently carrying on in the usual way the business of the cooperative of which such person is a member, does not bind the cooperative, unless the member so acting has in fact the authority to act for the cooperative in the particular matter.

(b) Unless the articles provide otherwise, the following persons are agents of the cooperative and may legally bind the cooperative, subject to the limitation on such persons contained in Chapters 38-70 of this title:

(1) The president;

(2) A person designated in the articles or the bylaws as being so authorized; or

(3) A person designated in writing by action of the directors as being so authorized.

SECTION 25. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 62:

Section 43-62-101. A cooperative shall be governed by its board of directors which shall take all action for and on behalf of the cooperative except those actions reserved or granted to members.

43-62-102. The articles of organization or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a member of the cooperative unless the articles of organization or bylaws so prescribe.

43-62-103. The board shall have not less than three (3) directors.

43-62-104. (a) Directors shall be elected for the term, at the time, and in the manner provided in this section and the bylaws. A majority of the directors shall be members and at least one (1) director shall be elected exclusively by the members holding patron membership interests. The voting authority of the directors shall be as prescribed in the bylaws; provided that at least fifty-one percent (51%) of the voting power on general matters of the cooperative shall be allocated to one (1) or more directors elected by members holding patron membership interests or, in the alternative, one (1) or more directors elected by members holding patron membership interests shall have at least fifty-one percent (51%) voting power on general matters of the cooperative.

(b) Directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws. Except for directors elected at district meetings, all directors shall be elected at the regular members' meeting.

(c) For a cooperative with districts or other units, members may elect directors on a district or unit basis if provided in the bylaws. The directors may be nominated or elected at district meetings if provided in the bylaws. Directors who are nominated at district meetings shall be elected at the annual regular members' meeting by vote of the entire membership, unless the bylaws provide that directors who are nominated at district meetings are to be elected by vote of the members of the district, at the district meeting or the annual regular members' meeting.

(d) The following shall apply to alternative voting:

(1) A member may not vote other than by their presence at a meeting for a director or by mail ballot authorized by the board of directors, unless alternative voting is authorized for election of directors by the articles or bylaws;

(2) The ballot shall be in a form prescribed by the board;

(3) The member shall mark the ballot for the candidate chosen and mail the ballot to the cooperative in a sealed plain envelope inside another envelope bearing the member's name, or shall vote in the alternative manner prescribed by the board; and

(4) If the ballot of the member is received by the cooperative on or before the date of the regular members' meeting, the ballot shall be accepted and counted as the vote of the absent member.



(e) If a member of a cooperative is not a natural person, and the bylaws do not provide otherwise, the member may appoint or elect one (1) or more natural persons to be eligible for election as a director to the board.

Section 43-62-105. If a patron member director's position becomes vacant for a director that was elected by patron members, the board shall appoint a patron member of the cooperative to fill the director's position until the next regular or special members' meeting, provided, if there is only one (1) patron member director a special members' meeting shall be called to fill the patron member director vacancy. If the vacating director was not a patron member, the board shall appoint a patron member or a patron member's representative to fill the vacant position. At the next regular or special members' meeting, the members or patron members shall elect a director to fill the unexpired term of the vacant director's position.

Section 43-62-106. (a) A director may resign at any time by delivering written notice to the board of directors, its chair or president, or to the corporation.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

Section 43-62-107. (a) The members electing a director may remove the director at a members' meeting for cause related to the duties of the position of director and fill the vacancy caused by the removal.

(b) If a director is elected exclusively by the members holding patron membership interests, only the patron members may participate in the vote to remove the director.

(c) A director may be removed by the members or directors only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is removal of directors.

Section 43-62-108. Unless the articles or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Section 43-62-109. (a) A director's personal liability to the cooperative or members for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles except as provided in subsection (b) of this section.

(b) The articles may not eliminate or limit the liability of a director:

(1) For a breach of the director's duty of loyalty to the cooperative or its members;

(2) For acts or omissions that are not in good faith or involve intentional misconduct or a knowing violation of law;

(3) For a transaction from which the director derived an improper personal benefit; or

(4) For an act or omission occurring before the date when the

provision in the articles eliminating or limiting liability becomes effective.

Section 43-62-110. (a) Meetings of the board of directors may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board of directors may select or by any means described in subsection (b). If the board of directors fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.

(b)(1) Unless the articles or bylaws provide otherwise, the board of directors may permit any or all directors to participate by or conduct the meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting and the minutes may reflect such.

(2) A meeting held by electronic communication shall be deemed held at the location required by this section, articles or bylaws.

(c) Unless the articles or bylaws provide otherwise, the chief manager or the lesser of a majority of the directors or two (2) directors may call a special meeting of the board of directors by giving two (2) days' notice to all directors of the date, time and place of the meeting. The notice need not state the purpose of the meeting unless Chapters 1-30 of this title, the articles or the bylaws require it.

(d) If the day or date, time, and place of a board of directors meeting have been provided in the articles or bylaws, or a regular meeting date, time and place have been established by the board of directors, no notice of such meeting is required. Notice of an adjourned meeting need not be other than by announcement at the meeting at which adjournment is taken; provided, that the period of adjournment does not exceed one (1) month for any one (1) adjournment.

(e)(1) A director may waive any notice required by this section, the articles or bylaws before or after the date and time stated in the notice. Except as provided in subdivision (e)(2), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or other records of the cooperative.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

Section 43-62-111. (a) Unless the articles or bylaws require a different number, a quorum of a board of directors consists of:

(1) A majority of the fixed number of directors, if the cooperative has a fixed board size;

(2) A majority of the number of directors prescribed under articles or bylaws, or if no number is prescribed, the number in office immediately before the meeting begins, if the cooperative has a variable-range board.

(b) The articles or bylaws may authorize a quorum of a board of directors to consist of no fewer than one third (1/3) of the fixed or prescribed number of directors determined under subsection (a).

(c) If a quorum is present, the affirmative vote of a majority of directors present is the act of the board of directors unless the act, articles or bylaws require the vote of a greater number of directors.

(d) If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion or number otherwise required for a quorum.

(e) A director who is present at a meeting of the board of directors when cooperative action is taken is deemed to have assented to the action taken unless:

(1) The director objects at the beginning of the meeting (or promptly upon the director's arrival) to holding it or transacting business at the meeting;

(2) The director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(3) The director delivers written notice of dissent or abstention to the presiding officer of the meeting before its adjournment or to the cooperative immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Section 43-62-112. (a)(1) Unless the articles or bylaws provide otherwise, an action required or permitted to be taken at a board of directors meeting may be taken without a meeting. If all directors consent to taking such action without a meeting, the affirmative vote for the number of directors that would be necessary to authorize or take such action at meeting is the act of the board of directors. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each director in one (1) or more counterparts, indicating the signing director's vote or abstention on the action, and shall be included in the minutes or filed with the cooperative's records reflecting the action taken.

(2) Notwithstanding the provisions of subdivision (a)(1), the articles or bylaws may provide for written director action to be taken without all directors consenting to the waiver of actual meeting, but such consent must be of at least two thirds (2/3) of the directors.

(b) The written action is effective when the last required director signs the action, unless a different effective time is provided in the written action.

(c) If the articles or bylaws permit written action and waiver of meetings by less than all directors, all directors must be notified immediately of the action's

text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken by this written action.

(d) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. Any action requiring a meeting by the board of directors is satisfied by a consent signed under this section.

Section 43-62-113. (a) Unless the articles or bylaws provide otherwise, the board of directors may create one (1) or more committees. A committee may consist of one (1) member. All members of committees of the board of directors which exercise powers of the board of directors must be members of the board of directors and serve at the pleasure of the board of directors.

(b) The creation of a committee and appointment of a member or members to it must be approved by the greater of:

(1) A majority of all the directors in office when the action is taken; or

(2) The number of directors required by the articles or bylaws to take action under § 43-62-111.

(c) Sections 43-62-110, 43-62-111 and 43-62-112, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(d) To the extent specified by the board of directors or in the articles or bylaws, each committee may exercise the authority of the board of directors under § 43-62-101.

(e) A committee may not:

(1) Authorize distributions, except according to a formula or method prescribed by the board of directors;

(2) Fill vacancies on the board of directors or on any of its committees;

(3) Adopt, amend, or repeal bylaws; or

(4) Authorize or approve the issuance or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitation of a class or series of shares, except that the board of directors may authorize a committee (or senior executive officer of the cooperative) to do so within limits specifically prescribed by the board of directors.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § 43-62-114.

Section 43-62-114. (a) A director shall discharge the duties of the position as a director, including duties as a member of a committee, in good faith, in a manner the director reasonably believes to be in the best interests of the

cooperative, and with the care an ordinary prudent person in a like position would exercise under similar circumstances.

(b)(1) A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by:

(A) One (1) or more officers or employees of the cooperative whom the director reasonably believes to be reliable and competent in the matters presented;

(B) Legal counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or

(C) A committee of the board of directors of which the director is not a member, if the director reasonably believes the committee merits confidence.

(2) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subdivision (b)(1) unwarranted.

(c) A director is not liable for any action taken as a director, or any failure to take action, if the director performed the duties of the office in compliance with subsections (a) and (b).

(d) A director's personal liability to the cooperative or its members for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles or bylaws; such provisions shall not eliminate or limit the liability of a director for the following:

(1) For any breach of the director's duty or loyalty to the cooperative or its members; however, the articles or bylaws may define the duty loyalty in a manner to reflect the understanding of the parties, provided such definition is not manifestly unreasonable under the circumstances;

(2) For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(3) Under § 43-66-101; or

(4) For any act or omission occurring before the date when the provision in the articles eliminating or limiting liability becomes effective.

(e) Notwithstanding anything to the contrary in this section, the articles or bylaws may define the standard of conduct for directors in a manner to reflect the understanding of the parties; provided, that such definition is not manifestly unreasonable under the circumstances.

(f) A person alleging a violation of this section has the burden of proving the violation.

Section 43-62-115. (a) A conflict of interest transaction is a transaction with the cooperative in which a director, officer or non-director member of a

special litigation committee of the cooperative has a direct or indirect interest. A conflict of interest transaction is not voidable by the cooperative solely because of the director's or officer's interest in the transaction if any one (1) of the following is true:

(1) The material facts of the transaction and the director's or officer's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;

(2) The material facts of the transaction and director's or officer's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction;

(3) The transaction was fair to the cooperative;

(4) The transaction was of a nature in which the conflict of interest is waived by the articles or bylaws. Such waiver shall be upheld unless manifestly unreasonable under the circumstances.

(b) For purposes of this section, a director or officer of the cooperative has an indirect interest in a transaction if, but not only if:

(1) Another entity in which the director or officer has material financial indirect interest or in which the director or officer is a general partner is party of the transaction; or

(2) Another entity of which the director or officer is a governor, director, manager, officer or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the cooperative.

(c) For purposes of subdivision (a)(1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum must be present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subdivision (a)(1) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(d) For purposes of subdivision (a)(2), a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the membership interests entitled to be counted under this subsection. Membership interests owned by or voted under the control of a director or officer who has a direct or indirect interest in the transaction, and membership interests owned by or voted under the control of an entity described in subdivision (b)(1), may not be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction under subdivision (a)(2). The vote of those membership interests, however, shall be counted in determining whether the transaction is approved under other provisions of Chapters 38-70 of this title. A majority of the membership interests, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a

quorum for the purpose of taking action under this section.

Section 43-62-116. The cooperative shall have a president and a secretary who shall not be the same person, and such other officers as may be elected or appointed by the board of directors in accordance with § 43-62-117.

Section 43-62-117. The board of directors shall elect or appoint, in a manner set forth in the articles or bylaws or in a resolution approved by the affirmative vote of a majority of the directors present, a president, secretary and any other officers or agents the board of directors considers necessary or desirable for the operation and management of the cooperative. These officers and agents have the powers, rights, duties, responsibilities, and terms of office provided for in the articles or bylaws, or as determined by the board of directors.

Section 43-62-118. Officers need not be residents of this state or members of the cooperative unless the articles or bylaws so require. The articles or bylaws may prescribe other qualifications for officers.

Section 43-62-119. (a) An officer with discretionary authority shall discharge all duties under that authority:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interest of the cooperative.

(b) In discharging such duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One (1) or more officers or employees of the cooperative (or a subsidiary of the cooperative) whom the officer reasonably believes to be reliable and competent in the matter presented; or

(2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(c) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer or any failure to take any action, if the officer performed the duties of office in compliance with this section.

Section 43-62-120. (a) An officer may resign at any time by delivering notice to the cooperative. A resignation is effective when the notice is delivered unless the notice specified a later effective date. If a resignation is made effective at a later date and the cooperative accepts the future effective date, its board of directors may fill the pending vacancy before the effective date. Its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the

effective date.

(b) A board of directors may remove any officer at any time with or without cause and any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer.

SECTION 26. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 63:

Section 43-63-101. A member may not commence a proceeding in the name of a domestic cooperative unless the member was a member of such cooperative when the transaction complained of occurred or unless the member becomes a member through transfer by operation of law from one who was a member at that time.

Section 43-63-102. A complaint in a proceeding brought in the name of a cooperative must allege with particularity the demand made, if any, to obtain action by the board of directors or officers and either that the demand was refused or ignored or why the member did not make such demand.

Section 43-63-103. A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the cooperative or a class of members and holders of financial rights, the court shall direct that notice be given the members and holders of financial rights affected. If notice is so directed to be given, the court may determine which one (1) or more parties to the suit shall bear the expense of giving such notice, in such proportions as the court finds to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the suit and recoverable in the same manner as other taxable costs.

Section 43-63-104. (a) On termination of the proceeding, the court may require the plaintiff to pay the defendant's reasonable expenses (including counsel fees) incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(b) If a derivative action is successful in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees. If anything is so received by the plaintiff, the court shall make such award of the plaintiff's expenses payable out of those proceeds and direct the plaintiff to remit to the cooperative the remainder thereof, and if those proceeds are insufficient to reimburse the plaintiff's reasonable expenses, the court may direct that any such award of the plaintiff's expenses or portion thereof be paid by the cooperative.

Section 43-63-105. If a cooperative or an officer or director of the cooperative violates a provision of Chapters 38-70 of this title, a court in this state may, in an action brought by a member of the cooperative, grant any equitable relief it considers just and reasonable in the circumstances and award expenses, including counsel fees and disbursements, to the member.

SECTION 27. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 64:

43-64-101. As used in this chapter, unless the context otherwise



requires:

(1) "Cooperative" means a cooperative whose members have obtained rights to dissent under § 43-64-201(a), and includes any successor by merger;

(2) "Dissenter" means a member who is entitled to dissent from cooperative action under § 43-64-201(a) and who exercises that right when and in the manner required under this chapter;

(3) "Fair value" means the value of the dissenter's membership interest of a cooperative immediately before the effective date of the cooperative action referred to in § 43-64-201(a), excluding any appreciation or depreciation in anticipation of the cooperative action;

(4) "Interest" means interest from the effective date of the action referred to in § 43-64-201(a) that gave rise to the member's right to dissent until the date of payment, at the average auction rate paid on United States treasury bills with a maturity of six (6) months (or the closest maturity thereto) as of the auction date for such treasury bills closest to such effective date; and

(5) "Member" includes a former member when dissenter's rights exist because:

(A) The membership of such former member has terminated causing dissolution; and

(B) The dissolved cooperative has then entered into a merger under § 43-68-101 or § 43-68-102.

Section 43-64-201. (a) A member of a cooperative is entitled to dissent from, and obtain payment of the fair value, as determined under § 43-64-206, of the member's membership interests in the event of, any of the following cooperative actions:

(1) Consummation of a plan or merger to which the cooperative is a party;

(2) Consummation of a sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the cooperative not made in the usual or regular course of its business, but not including a disposition in dissolution described in § 43-69-401(b), or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with their respective membership interests within one (1) year after the date of disposition;

(3) Except as provided in the articles or bylaws in effect when the person becomes a member or placed in such agreement without the opposing vote of the member, an amendment of the articles or bylaws that materially and adversely affects the rights or preferences of the membership interests of the dissenting member because it:

(A) Alters or abolishes a preferential right of the membership interests;

(B) Alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;

(C) Excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the marking of contribution agreements pertaining to membership interests with similar or different voting rights; or

(D) Establishes or changes the conditions for or consequences of expulsion;

(4) An amendment to the articles or bylaws that materially and adversely affects the rights or preferences of the membership interests of the dissenting member because it:

(A) Changes a member's right to resign or retire; or

(B) Alters or abolishes a right in respect of the remedies of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of such membership interests;

(5) Any other cooperative action taken pursuant to a member vote to the extent the articles, the bylaws, or a resolution approved by the members provides that dissenting members are entitled to dissent and obtain payment for their membership interests;

(b) A member entitled to dissent and obtain payment for such member's membership interest under this chapter may not challenge the cooperative action creating such member's entitlement unless the action is unlawful or fraudulent with respect to the member or the cooperative.

Section 43-64-202. (a) If proposed cooperative action creating dissenter's rights under § 43-64-201 is submitted to a vote at a members' meeting, the meeting notice must state that members are or may be entitled to assert dissenter's rights under this chapter and be accompanied by a copy of this chapter.

(b) If cooperative action creating dissenter's rights under § 43-64-201 is taken without a vote of the members, the cooperative shall notify in writing all members entitled to assert dissenter's rights that the action was taken and send them the dissenter's notice described in § 43-64-204.

(c) A cooperative's failure to give notice pursuant to this section will not invalidate the cooperative action.

Section 43-64-203. (a) If proposed cooperative action creating dissenter's rights under § 43-64-201 is submitted to vote at a members' meeting, a member who wishes to assert dissenter's rights:

(1) Must deliver to the cooperative, before the vote is taken, written notice of such member's intent to demand payment for such member's membership interest if the proposed action is effectuated; and

(2) Must not vote such member's membership interest in favor of the proposed action. No such written notice of intent to demand payment is required of any member to whom the cooperative failed to provide the notice required by § 43-64-202.

(b) A member who does not satisfy the requirements of subsection (a) is not entitled to payment for such member's membership interest under this chapter.

Section 43-64-204. (a) If proposed cooperative action creating dissenter's rights under § 43-64-201 is authorized at a members' meeting, the cooperative shall deliver a written dissenter's notice to all members who satisfied the requirements of § 43-64-203.

(b) The dissenter's notice must be sent no later than ten (10) days after the cooperative action was authorized by the members or effectuated, whichever is the first to occur, and must:

(1) State where the payment demand must be sent:

(2) Supply a form for demanding payment that includes the date of the first announcement to news media or to members of the principal terms of the proposed cooperative action and requires that the person asserting dissenter's rights certify whether or not the member acquired membership interest before that date;

(3) Set a date by which the cooperative must receive the payment demand, which date may not be fewer than one (1) nor more than two (2) months after the date required in subsection (a) is delivered; and

(4) Be accompanied by a copy of this chapter, if the cooperative has not previously sent a copy of this chapter to the member pursuant to § 43-64-202.

Section 43-64-205. (a) A member sent a dissenter's notice described in § 43-64-204 must demand payment and certify whether the member acquired the membership interest before the date required to be set forth in the dissenter's notice pursuant to § 43-64-204(b)(2).

(b) The member who demands payment under subsection (a) retains all other rights of a member until these rights are cancelled or modified by the effectuation of the proposed cooperative action.

(c) A member who does not demand payment by the date set in the dissenter's notice is not entitled to payment for such member's membership interest under this chapter.

(d) A demand for payment filed by a member may not be withdrawn unless the cooperative with which it was filed, or the surviving cooperative consents to such withdrawal.

Section 43-64-206. (a) Except as provided in § 43-64-208, as soon as the proposed cooperative action is effectuated, or upon receipt of a payment demand, whichever is later, the cooperative shall pay each dissenter who complied with § 43-64-205 the amount the cooperative estimates to be the fair

value of such dissenter's membership interest, plus accrued interest.

(b) The payment must be accompanied by:

(1) The cooperative's balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, and the latest available interim financial statements, if any;

(2) A statement of the cooperative estate of the fair value of the membership interests;

(3) An explanation of how the value of the membership interest was calculated;

(4) A statement of the dissenter's right to demand payment under § 43-64-209; and

(5) A copy of this chapter, if the cooperative has not previously sent a copy of this chapter to the member pursuant to § 43-64-202 or § 43-64-204.

Section 43-64-207. If the cooperative does not effectuate the proposed action that gave rise to the dissenter's rights within two (2) months after the date set for demanding payment, it must send a new dissenter's notice under § 43-64-203 and repeat the payment demand procedure if it effectuates the proposed action.

Section 43-64-208. (a) A cooperative may elect to withhold payment required by § 43-64-206 from a dissenter unless the dissenter was a member before the date set forth in the dissenters' notice as of the date of the first announcement to news media or to members of the principal terms of the proposed cooperative action.

(b) To the extent the cooperative elects not to withhold payment under subsection (a), after effectuating the proposed cooperative action, it shall estimate the fair value of the membership interest, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The cooperative shall send with its offer a statement of its estimate of the fair value of the membership interest, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under § 43-64-209.

Section 43-64-209. (a) A dissenter may notify the cooperative in writing of the dissenter's own estimate of the fair value of such dissenter's membership interest and amount of interest due, and demand payment of the dissenter's estimate (less any payment under § 43-64-206), or reject the cooperative offer under § 43-64-208 and demand payment of the fair value of membership interest and interest due, if:

(1) The dissenter believes that the amount paid under § 43-64-206 or offered under § 43-64-208 is less than the fair value of such dissenter's membership interest or that the interest due is incorrectly calculated; or

(2) The cooperative fails to make payment under § 43-64-206 within two (2) months after the date set for demanding payment.

(b) A dissenter waives the right to demand payment under this section unless dissenter notifies the cooperative of such dissenter's demand in writing under subsection (a) within one (1) month after the cooperative made or offered payment for such dissenter's membership interest.

Section 43-64-301. (a) If a demand for payment under § 43-64-209 remains unsettled, the cooperative shall commence a proceeding within two (2) months after receiving the payment demand and petition the court to determine the fair value of the membership interest and accrued interest. If the cooperative does not commence the proceeding within the two-month period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(b) The cooperative shall commence the proceeding in a court of record having equity jurisdiction in the county where the cooperative's principal executive office (or, if none in this statement, its registered office) is located.

(c) The cooperative shall make all dissenters (whether or not residents of this state) whose demands remain unsettled, parties to the proceeding as an action against their membership interests, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(e) Each dissenter made a party to the proceeding is entitled to judgment:

(1) For the amount, if any, by which the court finds the fair value of the dissenter's membership interest plus accrued interest exceeds the amount paid by the cooperative; or

(2) For the fair value, plus accrued interest, or such dissenter's after-acquired membership interests for which the cooperative elected to withhold payment under § 43-64-208.

(f) The cooperative is entitled to judgment against each specific dissenter for the amount, if any, by which the court finds the fair value of such dissenter's membership interest, plus accrued interest, is less than the amount paid by the cooperative to each dissenter.

Section 43-64-302. (a) The court in an appraisal proceeding commenced under § 43-64-301 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the cooperative, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under § 43-64-209.

(b) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(1) Against the cooperative and in favor of any or all dissenters if the court finds the cooperative did not substantially comply with the requirements of Part 2 of this chapter.

(2) Against either the cooperative or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the cooperative, the court may award to such counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

Section 43-64-401. When an assignment of some or all of the financial rights of a membership is in effect and a copy delivered to the cooperative prior to the time described in § 43-64-206, then as to that membership interest the provisions of Parts 1-3 of this chapter must be followed, subject to the following:

(1) All rights to be exercised and actions to be taken by a member under Parts 2 and 3 of this chapter shall be taken by the member and not by any assignee of the member's financial rights. As between the cooperative and the assignees, the actions taken or omitted by the member bind the assignees.

(2) Instead of remitting a payment under § 43-64-206, the cooperative shall forward to the dissenter member:

(A) The materials described in § 43-63-206(b);

(B) An offer to pay the amount listed in the materials, with that amount to be allocated among and paid to the member and the assignees of financial rights according to the terms of the assignments reflected in the required records; and

(C) A statement of that allocation.

(3) If the dissenter member accepts the amount of the offer made under subdivision (2) but disputes the allocation, the dissenter shall promptly so notify the cooperative and promptly after such notification bring an action to determine the proper allocation. The suit must be filed in the county in which the registered office of the cooperative is located. The suit must name as parties the member, the cooperative and all assignees of the members financial rights. Upon being served with the action, the cooperative shall promptly pay into the court the amount offered under subdivision (2) and shall then be dismissed from the action.

(4) If the dissenter considers the amount offered under subdivision (2) inadequate, the dissenter may decline the offer and demand payment under § 43-64-209. If the dissenter makes demand, Part 3 of this chapter applies, with the court having jurisdiction also to

determine the correctness of the allocation.

(5) If the member fails to take action under either subdivision (3) or (4), then:

(A) As to the cooperation, both the member and the assignees of the member's financial rights are limited to the amount and allocation offered under subdivision (2); and

(B) The cooperative discharges its obligation of payment by making payment according to the amount and allocation offered under subdivision (2).

SECTION 28. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 65:

Section 43-65-101. (a) The bylaws shall prescribe the allocation of profits and losses between patron membership interests collectively and other membership interests. If the bylaws do not otherwise provide, the profits and losses between patron membership interests collectively and other membership interests shall be allocated on the basis of the value of contributions to capital made by the patron membership interests collectively and other membership interests and accepted by the cooperative. The allocation of profits to the patron membership interests collectively shall not be less than fifteen percent (15%) of the total profits in any fiscal year.

(b) The bylaws shall prescribe the distribution of cash or other assets of the cooperative among the membership interests of the cooperative. If not otherwise provided in the bylaws, distribution shall be made to the patron membership interests collectively and other members on the basis of the value of contributions to capital made and accepted by the cooperative by the patron membership interests collectively and other membership interests. The distributions to patron membership interests collectively shall not be less than fifteen percent (15%) of the total distributions in any fiscal year.

Section 43-65-102. (a) A cooperative may set aside a portion of net income allocated to the patron membership interests as the board determines advisable to create or maintain a capital reserve.

(b) In addition to a capital reserve, the board may, for patron membership interests:

(1) Set aside an amount not to exceed five percent (5%) of the annual net income of the cooperative for promoting and encouraging cooperative organization; and

(2) Establish and accumulate reserves for new buildings, machinery and equipment, depreciation, losses, and other proper purposes.

(c) Net income allocated to patron members in excess of dividends on equity and additions to reserves shall be distributed to patron members on the basis of patronage. A cooperative may establish allocation units, whether the units are functional, divisional, departmental, geographic, or otherwise and pooling arrangements and may account for and distribute net income to patrons on the basis of allocation units and pooling arrangements. A cooperative may

offset the net loss of an allocation unit or pooling arrangement against the net income of other allocation units or pooling arrangements.

(d) Distribution of net income shall be made at least annually. The board shall present to the members at their annual meeting a report covering the operations of the cooperative during the preceding fiscal year.

(e) A cooperative may distribute net income to patron members in cash, capital credits, allocated patronage equities, revolving fund certificates, or its own or other securities.

(f) The cooperative may provide in the bylaws that nonmember patrons are allowed to participate in the distribution of net income payable to patron members on equal terms with patron members.

(g) If a nonmember patron with patronage credits is not qualified or eligible for membership, a refund due may be credited to the patron's individual account. The board may issue a certificate of interest to reflect the credited amount. After the patron is issued a certificate of interest, the patron may participate in the distribution of income on the same basis as a patron member.

Section 43-65-103. (a) No distribution may be made by a cooperative if, after giving effect to the distribution:

(1) The cooperative would not be able to pay its debts as they became due in the normal course of business; or

(2) The cooperative's total assets would be less than the sum of its total liabilities plus, unless the articles or bylaws permit otherwise, the amount that would be needed if the cooperative were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution and excluding liabilities for which the recourse of creditors is limited to specified property of the cooperative, except that the fair value of property that is subject to a liability for which the recourse is limited shall be included in the assets of the cooperative only to the extent that the fair value of the property exceeds that liability.

(b) The cooperative may base a determination that a distribution is not prohibited under subsection (a) either on:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) A fair valuation or other method that is reasonable in the circumstances.

(c) The effect of a distribution under subsection (a) is measured as:

(1) The date the distribution is authorized if the payment occurs within four (4) months after the date of authorization; or

(2) The date the payment is made if it occurs more than four (4) months after the date of authorization.



(d) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(e) A cooperative's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the cooperative's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement and except to the extent provided otherwise by § 43-69-401(c).

SECTION 29. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 66:

Section 43-66-101. (a) Unless such person complies with the applicable standards of conduct set forth in § 43-62-114, a member or director who votes for or assents to a distribution made in violation of § 43-65-103 or the articles or bylaws is personally liable to the cooperative for the amount of the distribution that exceeds what could have been distributed without violating § 43-65-103 or the articles or bylaws.

(b) A director or member held liable for an unlawful distribution under subsection (a) is entitled to contribution:

(1) From every other director and member who voted for or assented to the distribution; and

(2) From each member for the amount the member accepted, knowing the distribution was made in violation of § 43-65-103 or the articles or bylaws.

(c) Subject to subsection (d), this section shall not affect any obligation or liability of a director or member under the articles or bylaws or other applicable law for the amount of a distribution.

(d) Unless otherwise agreed, a member who receives a distribution from a cooperative or an officer or director who votes for or assents to such distribution shall have no liability under this section or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution.

SECTION 30. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 67:

Section 43-67-101. Subject to such standards and restrictions, if any, as are set forth in its articles or bylaws, a cooperative may, and shall have the power to, indemnify and hold harmless any member or officer or other person from and against any and all claims and demands whatsoever.

SECTION 31. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 68:

Section 43-68-101. (a) Unless otherwise prohibited, cooperatives organized under the laws of this state may merge or consolidate with each other or other business entities organized under the laws of this state or another state by complying with the provisions of this section or the law of the state where the

surviving or new business entity will exist.

(b) To initiate a merger or consolidation of a cooperative, a written plan of merger or consolidation shall be prepared by the board or by a committee selected by the board to prepare a plan. The plan shall state:

(1) The names of the constituent cooperatives and other business entities;

(2) The name of the surviving or new cooperative or other business entity;

(3) The manner and basis of converting membership or ownership interests of the constituent cooperatives or business entities into membership or ownership interests in the surviving or new cooperative or business entity;

(4) The terms of the merger or consolidation;

(5) The proposed effect of the consolidation or merger on the members and patron members of the cooperative; and

(6) For a consolidation, the plan shall contain the articles of the entity or organizational documents to be filed with the state in which the entity is organized.

(7) Any other provisions required by the laws under which any party to the merger is organized.

(c) The following shall apply to notice:

(1) The board shall mail a merger or consolidation or otherwise transmit or deliver notice to each member. The notice shall contain:

(A) The full text of the plan; and

(B) The time and place of the meeting at which the plan will be considered.

(2) A cooperative with more than two hundred (200) members may provide the merger or consolidation notice in the same manner as a regular members' meeting notice.

(d) The following shall apply to the adoption of a plan or merger or consolidation:

(1) A plan of merger or consolidation is adopted if:

(A) The directors recommend the plan of merger or consolidation be approved by the members, unless the directors determine that because of conflict of interest or due to the special circumstances it should make no recommendation, in which case the directors shall submit the plan of merger or consolidation to the members of the cooperative for approval without recommendation and, in connection with the submission, shall communicate the basis for its determination that the plan be

submitted for approval without any recommendation; and

(B) A quorum of the members is registered as being present or represented by mail vote at the meeting; and

(C) The plan is approved by two-thirds (2/3) of the votes cast, or for a cooperative with articles or bylaws requiring more than two-thirds (2/3) of the votes cast or other conditions for approval, the plan is approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(2) After the plan has been adopted, articles of merger or consolidation stating the plan and that the plan was adopted according to this article shall be signed by the chair, vice-chair, records officer or documents officer of each cooperative merging or consolidating;

(3) The articles of merger or consolidation shall be filed in the office of the secretary of state and must set forth:

(A) The name, jurisdiction and date of formation or organization of each of the cooperatives or other entities which is a party to the merger;

(B) That a plan of merger has been approved and executed by each of the cooperatives and other business entities which are a party to the merger;

(C) The name and address of the principal executive office or equivalent thereof, of the surviving or resulting entity into which the other entities will merge;

(D) The future effective date or time, which shall be a date or time certain and which shall comply with § 43-70-109(b) of the merger if it is not to be effective upon the filing of the plan of merger;

(E) That the plan of merger is on file at a place of business of the surviving or resulting entity; and shall state the address thereof;

(F) That a copy of the plan of merger will be furnished by the surviving or resulting entity, on request and without cost, to any member of any domestic cooperative or any persons holding an interest in any other entity which is or was a party to the merger; and

(G) If the surviving or resulting entity is not a domestic cooperative, a statement that such surviving or resulting entity agrees that it may be served with process in this state in any action, suit or proceeding for the enforcement of any obligation of any entity which is a party to the merger, irrevocably appointing the secretary of state as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the

secretary of state. In the event of service hereunder upon the secretary of state, the procedures set forth in § 43-45-105 shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the secretary of state with the address specified in the certificate of merger provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the secretary of state, and the secretary of state shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 43-45-105.

(4) For a merger, the articles of the surviving cooperative subject to this article are deemed amended to the extent provided in the articles of merger; and

(5) Unless a later date is provided in the plan, the merger or consolidation is effective when the articles of merger or consolidation are filed in the office of the secretary of state.

(e) The following shall apply to the effect of a merger:

(1) After the effective date, the cooperatives or other business entities that are parties to the plan become a single entity. For a merger, the surviving business entity is the business entity designated in the plan. For a consolidation, the new cooperative or other business entity is the business entity provided for in the plan. Except for the surviving or new business entity, the separate existence of all business entities that are parties to the plan cease on the effective date of the merger or consolidation, the articles of merger as filed with the office of the secretary of state shall act as notice of dissolution and articles of termination for a domestic cooperative which is not the surviving or resulting entity in the merger.

(2) The surviving or new business entity possesses all of the rights and property of each of the merged or consolidated business entities and is responsible for and assumes all their obligations and duties. The title to property of the merged or consolidated business entity is vested in the surviving or new business entity without reversion or impairment of title caused by the merger or consolidation. All liens upon any property of any of the merged business entities shall be preserved unimpaired and may be enforced against the surviving or resulting entity to the same extent as if the debts, liabilities and duties had incurred or contracted by the surviving or resulting party.

(3) The right of a creditor may not be impaired by the merger or consolidation without the creditor's consent.

(f) The fee to be paid to the secretary of state for filing articles of merger or consolidation shall conform with the provisions of § 43-70-103.

Section 43-68-102. (a) A cooperative may, by affirmative vote of a majority of the board present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of directors considers expedient, and without member approval:

(1) Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;

(2) Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or

(3) Transfer any or all of its property to a business entity all the ownership interests of which are owned by the cooperative.

(4) Unless the articles require it, approval by the members of a transaction described in subsection (a) is not required.

(b) A cooperative, by affirmative vote of a majority of the board of directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of directors considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the cooperative.

(c) Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current chair of the board of directors or authorized agents.

(d) The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by the statutes of this state.

SECTION 32. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 69:

Section 43-69-101. (a) A majority of the organizers or initial directors of a cooperative that has not issued membership interest or has not commenced business may dissolve the cooperative by delivering to the secretary of state for filing articles of dissolution and termination that set forth:

(1) The name of the cooperative;

(2) The date of its incorporation;

(3) Either that:

(A) None of the cooperative membership interest have been issued; or

(B) The cooperative has not commenced business;

(4) That no debt of the cooperative remains unpaid;

(5) That the net assets of the cooperative remaining after winding up have been distributed to the members, if membership interests were issued; and

(6) That a majority of the organizers or initial directors authorized the dissolution and the date dissolution was thus authorized.

(b) If the secretary of state finds that the articles of dissolution and termination of its cooperative existence comply with the requirements of subsection (a), the secretary of state shall file the articles of dissolution except that the termination of its existence shall not take away or impair any remedy to or against the cooperative, its directors, officers or members, for any right of claim existing or any liability incurred, prior to such termination. Any such action or proceeding by or against the cooperative may be prosecuted or defended by the cooperative in its name. The members, directors, and officers have the power to take such action as may be appropriate to protect such remedy, right of claim.

Section 43-69-102. (a) A cooperative may be voluntarily dissolved by the written consent of its members in accordance with § 43-69-301.

(b) A cooperative's board of directors may propose dissolution for submission to the members.

(c) For a proposal to dissolve to be adopted:

(1) The board of directors shall recommend dissolution to the members unless the board of directors determines that because of a conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members; and

(2) The members entitled to vote shall approve the proposal to dissolve as provided in subsection (f).

(d) The board of directors may condition its submission of the proposal for dissolution on any basis.

(e) The cooperative shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § 43-57-103. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider dissolving the cooperative and that dissolution must be followed by the winding up and termination of the cooperative.

(f) Unless the articles or the board of directors (acting pursuant to subsection (d)) require a greater vote or a vote by voting groups, if the proposed dissolution is approved at a meeting by a majority vote, the cooperative must be dissolved and notice of dissolution shall be filed with the office of the secretary of state pursuant to § 43-69-301.

Section 43-69-201. The secretary of state may commence a proceeding under § 43-69-202 to dissolve administratively the cooperative if:

(1) The cooperative does not deliver its properly completed annual report to the secretary of state within two (2) months after it is due;

(2) The cooperative is without a registered agent or registered office in this state for two (2) months or more;

(3) The name of a cooperative contained in a document filed pursuant to Chapters 38-70 of this title fails to comply with the provisions of § 43-44-101.

(4) The cooperative does not notify the secretary of state within two (2) months that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) The cooperative delivers to the secretary of state's office a check, bank draft, money order or other such instrument, for payment of any fee and it is dishonored upon presentation for payment; or

(6) A director, officer, member or other representative of a cooperative signed a document such person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing.

Section 43-69-202. (a) If the secretary of state determines that one (1) or more grounds exist under § 43-69-201 for dissolving a cooperative, the secretary of state shall serve the cooperative with written communication of the secretary of state's determination in accordance with §§ 43-45-104 and 43-45-105, except that such determination may be sent by first class mail.

(b) If the cooperative does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within two (2) months after service of the communication in accordance with §§ 43-45-104 and 43-45-105, the secretary of state shall administratively dissolve the cooperative by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the cooperative in accordance with §§ 43-45-104 and 43-45-105, except that the certificate may be sent by first class mail.

(c) A cooperative administratively dissolved continues its existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under § 43-69-401 and notify claimants under § 43-69-402.

(d) The administrative dissolution of a cooperative does not terminate the authority of its registered agent.

Section 43-69-203. (a) A cooperative administratively dissolved under § 43-69-202 may apply to the secretary of state for reinstatement following administrative dissolution. The application must:

(1) Recite the name of the cooperative at the date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State a cooperative name that satisfies the requirements of § 43-44-101.

(b)(1) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the cooperative in accordance with § 43-45-104.

(2) If the cooperative name in subdivision (a)(3) is different than the cooperative name in subdivision (a)(1), the application of reinstatement shall constitute an amendment to the articles insofar as it pertains to the cooperative's name.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the cooperative shall resume carrying on its business as if the administrative dissolution had never occurred.

43-69-204. (a) If the secretary of state denies a cooperative's application for reinstatement following administrative dissolution, the secretary of state shall serve the cooperative under §§ 43-45-104 and 43-45-105 with a written notice that explains the reason or reasons for denial.

(b) The cooperative may appeal the denial of reinstatement to the chancery court of Davidson County within thirty (30) days after service of the notice of denial. The corporation may appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the cooperative's application for reinstatement, and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved cooperative or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

Section 43-69-205. (a) When a cooperative, which has been administratively dissolved, wishes to terminate its existence, it may do so without first being reinstated by delivering to the secretary of state for filing articles of termination following administrative dissolution setting forth:

(1) The name of the cooperative;

(2) The date that termination of cooperative existence was authorized;

(3) That the resolution authorizing termination was duly adopted by the members;

(4) A copy of the resolution or the written consent authorizing the



termination; and

(5) A statement that all the assets of the cooperative have been distributed to its creditors and members.

(b) If the secretary of state finds that the articles of termination following administrative dissolution comply with the requirements of subsection (a), the secretary of state shall file the articles of termination following administrative dissolution. Upon such filing, the existence of the cooperative shall cease, except that the termination of cooperative existence shall not take away or impair any remedy to or against the cooperative or its members, directors or officers for any right or claim existing or any liability incurred, prior to such termination. Any such action or proceeding by or against the cooperative may be prosecuted or defended by the cooperative in its cooperative name. The members, directors or officers shall have the power to take such cooperative or other action as may be appropriate to protect such remedy, right or claim.

(c) The provisions of § 43-69-201 through § 43-69-205 shall apply to the administrative dissolution of any domestic cooperative.

Section 43-69-301. (a) If dissolution of the cooperative is approved pursuant to § 43-69-102(a), the cooperative shall file with the secretary of state a notice of dissolution that contains:

(1) The name of the cooperative; and

(2) If the dissolution is approved pursuant to § 43-69-102(f), the date of the meeting at which the resolution was approved, and a statement that the requisite vote of the members was received, or that members validly took action without a meeting.

(b) When the notice of dissolution has been filed with the secretary of state, the cooperative shall cease to carry on its business, except to the extent necessary for the winding up of the business of the cooperative. The members shall retain the right to revoke the dissolution in accordance with § 43-68-501 and the right to remove or appoint directors or officers. The cooperative existence continues to the extent necessary to wind up the affairs of the cooperative until the dissolution is revoked or articles of termination are filed with the secretary of state.

(c) As part of winding up, the cooperative may participate in a merger with another cooperative or one (1) or more domestic business entities under Chapter 68 of this title, but the dissolved cooperative shall not be the surviving business entity.

(d) The filing with the secretary of state of a notice of dissolution does not affect any remedy in favor of the cooperative or any remedy against it or its members, directors, or officers in those capacities, except as provided in § 43-69-402.

Section 43-69-401. (a) After the notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible:

(1) To collect or make provision for the collection of all debts due or owing to the cooperative, including unpaid subscriptions for shares;

and

(2) To pay or make provision for the payment of all debts, obligations and liabilities of the cooperative according to their priorities.

(b) After the notice of intent to dissolve has been filed with the secretary of state, the board may sell, lease, transfer or otherwise dispose of all or substantially all of the property and assets of the dissolving cooperative without a vote of the members.

(c) Tangible and intangible property, including money, remaining after the discharge of the debts, obligations and liabilities of the cooperative may be distributed to the members and former members as provided in the bylaws. If previously authorized by the members, the tangible and intangible property of the cooperative may be liquidated and disposed of at the discretion of the board.

Section 43-69-402. (a) When a notice of dissolution has been filed with the secretary of state, and the business of the cooperative is not to be wound up and terminated by merging the dissolved cooperative into a successor organization under § 43-68-101, then the cooperative may give notice of the filing to each creditor of and claimant against the cooperative, known or unknown, present or future, and contingent or noncontingent, in accordance with subsections (b) and (c).

(b)(1) A cooperative may dispose of the known claims against it by following the procedure described in this subsection.

(2) The dissolved cooperative shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:

(A) Describe information that must be included in a claim;

(B) State whether the claim is admitted, or not admitted, and if admitted:

(i) The amount that is admitted, which may be as of a given date; and

(ii) Any interest obligation if fixed by an instrument of indebtedness;

(C) Provide a mailing address where a claim may be sent;

(D) State the deadline, which may not be fewer than four (4) months from the effective date of the written notice, by which the dissolved cooperative must receive the claim; and

(E) State that, except to the extent that any claim is admitted, the claim will be barred if written notice of the claim is not received by the deadline.

(3) A claim against the dissolved cooperative is barred to the extent that:

(A) The dissolved cooperative delivered written notice to the claimant in accordance with subdivision (b)(2) and the claimant did not deliver a written notice of the claim to the dissolved cooperative by the deadline; or

(B) The dissolved cooperative delivered written notice to the claimant that the claimant's claim is rejected, in whole or in part, and the claimant did not commence a proceeding to enforce the claim within three (3) months from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

(5) For purposes of this section, written notice is effective at the earliest of the following:

(A) When received,

(B) Five (5) days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed thereon;

(C) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt signed by or on behalf of the addressee; or

(D) Twenty (20) days after deposit in the United States mail, as evidenced by the postmark if mailed correctly addressed, and with other than first class, registered or certified postage affixed.

(c)(1) A dissolved cooperative may also publish notice of its dissolution and request that persons with claims against the cooperative present them in accordance with the notice.

(2) The notice must:

(A) Be published one (1) time in a newspaper of general circulation in the county where the dissolved cooperative's principal executive office is or was last located;

(B) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(C) State that a claim against the cooperative will be barred unless a proceeding to endorse the claim is commenced within two (2) years after the publication of the notice.

(3) If the cooperative publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to endorse the claim against the dissolved cooperative within two (2) years

after the publication date of the newspaper notice:

(A) A claimant who did not receive written notice under subsection (b);

(B) A claimant whose claim was timely sent to the dissolved cooperative but not acted on; or

(C) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this subsection:

(A) Against the dissolved cooperative, to the extent of its undistributed assets; or

(B) If the assets have been distributed in liquidation, against a member of the dissolved cooperative to the extent of the member's pro rata share of the claim or the cooperative assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the member.

(d) If the dissolved cooperative does not comply with the provisions of subsections (b) and (c), claimants against the cooperative may enforce their claims:

(1) Against the dissolved cooperative to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a member of the dissolved cooperative to the extent of the member's pro rata share of the claim or the cooperative assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member; provided, that a claim may not be enforced against a member of a dissolved cooperative who received a distribution in liquidation after three (3) years from the date of the filing of articles of termination.

Section 43-69-403. The claim of a creditor or claimant against a dissolving cooperative is barred if the claim has not been enforced by initiating legal, administrative or arbitration proceedings concerning the claim by two (2) years after the date the notice of intent to dissolve is filed with the secretary of state.

Section 43-69-404. (a) The articles of termination shall be filed with the secretary of state upon the dissolution and the completion of winding up the cooperative.

(b) Articles of termination shall set forth:

(1) The name of the cooperative;

(2) The date of filing of its articles of organization;

(3) The reason for the filing of the articles of termination;

(4) Whether known and potential creditors and claimants have been notified of the dissolution under § 43-69-402; and

(5) Any other information which the person filing the articles of termination determines necessary or desirable to include.

Section 43-69-501. (a) Dissolution proceedings may be revoked before the articles of dissolution are filed with the secretary of state.

(b) The chair may call a members' meeting to consider the advisability of revoking the dissolution proceedings. The question of the proposed revocation shall be submitted to the members at the members' meeting called to consider the revocation. The dissolution proceedings are revoked if the proposed revocation is approved at the members' meeting by a majority of the members of the cooperative or for a cooperative with articles or bylaws requiring a greater number of members, the number of members required by the articles or bylaws.

(c) After the revocation of dissolution is authorized, the cooperative may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution that set forth:

(1) The name of the cooperative;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized;

(4) If the cooperative board of directors (or incorporators) revoked the dissolution, a statement to that effect;

(5) If the cooperative's board of directors revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If member action was required to revoke the dissolution, a statement that the resolution was duly adopted by the members and a copy of the resolution or the written consent authorizing the revocation of dissolution;

(d) If a revocation of dissolution is effective, it relates back to and takes effect upon the effective date of the dissolution and the cooperative shall resume carrying on its business as if dissolution had never occurred.

Section 43-69-601. The existence of the cooperative is terminated upon the filing of articles of termination with the secretary of state.

Section 43-69-701. After a notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the cooperative or, for good cause shown, a member or creditor, may apply to a court within the county where the registered address is located to have the dissolution conducted or continued under the supervision of the court as provided in § 43-69-803.

Section 43-69-801. A court may grant any equitable relief it considers just and reasonable in the circumstances or may dissolve a cooperative or direct that the dissolved entity is merged into another or new cooperative or other entity on the terms and conditions the court deems equitable.

Section 43-69-802. (a) On application by the attorney general and reporter, or by or for a member, the court may decree dissolution of a cooperative whenever it is not reasonably practicable to carry on the business in conformity with the articles and the operating agreement.

(b) The dissolution is effective upon the decree of dissolution becoming final and not eligible for appeal. Such decree shall be filed with the office of the secretary of state.

Section 43-69-803. (a) In dissolution proceedings, before a hearing is completed the court may:

- (1) Issue injunctions;
- (2) Appoint receivers with all powers and duties that the court directs;
- (3) Take actions required to preserve the cooperative's assets wherever located; and
- (4) Carry on the business of the cooperative.

(b) After a hearing is completed, on notice the court directs to be given to parties to the proceedings and to other parties in interest designated by the court, the court may appoint a receiver to collect the cooperative's assets, including amounts owing to the cooperative by subscribers on account of an unpaid portion of the consideration for the issuance of shares. A receiver has authority, subject to the order of the court, to continue the business of the cooperative and to sell, lease, transfer, or otherwise dispose of the property and assets of the cooperative either at public or private sale.

(c) The assets of the cooperative or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the following order of priority:

- (1) The costs and expenses of the proceedings, including attorneys' fees and disbursements;
- (2) Debts, taxes and assessments due the United States, this state and other states in that order;
- (3) Claims duly proved and allowed to employees under the provisions of the workers' compensation act except that claims under this clause may not be allowed if the cooperative has carried workers' compensation insurance, as provided by law, at the time the injury was sustained;
- (4) Claims, including the value of all compensation paid in a medium other than money, proved and allowed to employees for services performed within three (3) months preceding the appointment of

the receiver, if any; and

(5) Other claims proved and allowed.

(d) After payment of the expenses of receivership and claims of creditors are proved, the remaining assets, if any, may be distributed to the members or distributed pursuant to an approved liquidation plan.

Section 43-69-804. (a) A receiver shall be a natural person or a domestic corporation in this state. A receiver shall give a bond as directed by the court with the sureties required by the court.

(b) A receiver may sue and defend in all courts as receiver of the cooperative. The court appointing the receiver has exclusive jurisdiction of the cooperative and its property.

(c) The receiver and the court appointed receiver hereunder shall have the same powers and duties as a court appointed receiver would have pursuant to §48-24-303.

Section 43-69-805. (a) In proceedings to dissolve a cooperative, the court may require all creditors and claimants of the cooperative to file their claims under oath with the court administrator or with the receiver in a form prescribed by the court.

(b) If the court requires the filing of claims, the court shall:

(1) Set a date, by order, at least one hundred twenty (120) days after the date the order is filed, as the last day for the filing of claims; and

(2) Prescribe the notice of the fixed date that shall be given to creditors and claimants.

(c) Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the cooperative.

Section 43-69-806. The involuntary or supervised voluntary dissolution of a cooperative may be discontinued at any time during the dissolution proceedings if it is established that cause for dissolution does not exist. The court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the cooperative its remaining property and assets.

Section 43-69-807. (a) In an involuntary or supervised voluntary dissolution, after the costs and expenses of the proceedings and all debts, obligations and liabilities of the cooperative have been paid or discharged and the remaining property and assets have been distributed to its members, or if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations and liabilities, when all the property and assets have been applied so far as they will go to their payment according to their priorities, the court shall enter an order dissolving the cooperative.

(b) When the order dissolving the cooperative or association has been entered, the cooperative or association is dissolved.

Section 43-69-808. After the court enters an order dissolving a cooperative, the court administrator shall cause a certified copy of the dissolution order to be filed with the secretary of state. The secretary of state may not charge a fee for filing the dissolution order.

Section 43-69-901. (a) A cooperative shall be dissolved as provided in the articles in a manner consistent with other business entities organized in this state or if not provided, may be dissolved in the same manner as a limited liability company organized in this state or the members may authorize a liquidation by adopting a resolution at a members' meeting. The liquidation may occur with or without a vote of dissolution. The notice of the members' meeting shall include a statement that the disposition of all or substantially all of the assets of the cooperative will be considered at the meeting. If a quorum is present in person, by mail ballot, or alternative method approved by the board at the members' meeting, the resolution approving of the liquidation is adopted if:

(1) Approved by two-thirds (2/3) of the votes cast; or

(2) For a cooperative with articles or bylaws requiring more than two-thirds (2/3) for approval and other conditions for approval, the resolution is approved by the proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(b) The board of directors by resolution may liquidate a cooperative if the board obtains an opinion of certified public accountant that the cooperative is unlikely to continue as a business based on its current finances.

Section 43-69-1001. After a cooperative has been dissolved, any of its former officers, directors or members may assert or defend, in the name of the cooperative, a claim by or against the cooperative.

Section 43-69-1002. (a) A court may grant equitable relief that it deems just and reasonable in the circumstances or may dissolve a cooperative and liquidate its assets and business:

(1) In a supervised voluntary dissolution that is applied for by the cooperative;

(2) In an action by a member when it is established that:

(A) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the cooperative's affairs and the members are unable to break the deadlock;

(B) The directors or those in control of the cooperative have acted fraudulently, illegally or in a manner unfairly prejudicial toward one (1) or more members in their capacities as members, directors or officers;

(C) The members of the cooperative are so divided in voting power that, for a period that includes the time when two (2) consecutive regular members' meetings were held, they have



failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

(D) The cooperative assets are being misapplied or wasted; or

(E) The period of duration as provided in the articles has expired and has not been extended as provided in this article.

(3) In an action by a creditor when:

(A) The claim of the creditor against the cooperative has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or

(B) The cooperative has admitted in writing that the claim of the creditor against the cooperative is due and owing and it is established that the cooperative is unable to pay its debts in the ordinary course of business; or

(4) In an action by the attorney general and reporter to dissolve the cooperative in accordance with this subsection when it is established that a decree of dissolution is appropriate.

(b) In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the cooperative but may not refuse to order equitable relief or dissolution solely on the ground that the cooperative has accumulated operating net income or current operating net income.

(c) In deciding whether to order dissolution of the cooperative, the court shall consider whether lesser relief suggested by one (1) or more parties, such as a form of equitable relief or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision (a)(ii)(B) or (C) of this section. Lesser relief may be ordered if it would be appropriate under the facts and circumstances of the case.

(d) If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, the court may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

(e) Proceedings under this section shall be brought in a court within the county where the registered address of the cooperative is located.

(f) It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

Section 43-69-1003. (a) A person who is or who becomes a creditor or claimant before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative or arbitration proceeding during the pendency of the dissolution proceeding or has not initiated a legal, administrative, or arbitration proceeding before the commencement of the dissolution proceedings and all those claiming through or under the creditor or claimant, is forever barred from suing on that claim or

otherwise realizing upon or enforcing it, except as provided in this section.

(b) Within one (1) year after articles of dissolution have been filed with the secretary of state pursuant to this act or a dissolution order has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

(1) Against the cooperative to the extent of undistributed assets;  
or

(2) If the undistributed assets are not sufficient to satisfy the claim, the claim may be allowed against a member to the extent of distributions in dissolution received by the member.

(c) Debts, obligations, and liabilities incurred during dissolution proceedings shall be paid or provided for by the cooperative before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but is not paid may pursue any remedy against the officers, directors or members of the cooperative before the expiration of the applicable statute of limitations. This subsection does not apply to dissolution under the supervision or order of a court.

SECTION 33. Tennessee Code Annotated, Title 43, is amended by adding the following as new Chapter 70.

Section 43-70-101. (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements to be entitled to filing by the secretary of state.

(b) Chapters 38-70 of this title must require or permit filing the document in the office of the secretary of state.

(c) The document must contain the information required by Chapters 38-70 of this title. It may contain other information as well.

(d) The document must be typewritten or printed in ink in a clear and legible fashion on one (1) side of letter or legal size paper.

(e) The document must be in the English language. A cooperative's or other business entity's name need not be in English if written in English letters or Arabic or Roman numeral.

(f) The document must be executed:

(1) By the president of the board of directors of a cooperative, or by another of its authorized officers if a cooperative action is taken.

(2) If directors of a cooperative have not been selected or the cooperative has not been formed, by an organizer; or

(3) If the business entity is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the person signs. The document may but need not contain:

(1) An attestation by the secretary or an assistant secretary;

(2) An acknowledgment, verification, or proof; or

(3) The date the document is signed, except that such date shall be required for the annual report for the secretary of state.

(h) If the secretary of state pursuant to statutory authority has prescribed a mandatory form for the document, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the secretary of state for filing and must be accompanied by the current filing fee, and any tax, license fee, interest, or penalty required by Chapters 38-70 of this title.

(j) The document must contain a statement which makes it clear that it is being filed pursuant to the Tennessee processing cooperative act.

(k) The secretary of state has the power to promulgate appropriate rules and regulations establishing acceptable methods for execution of any document to be filed with the secretary of state.

(l) Notwithstanding any other provision of the law to the contrary, whenever this title requires that an application or other document submitted to the secretary of state for filing be accompanied by a certificate from the Commissioner of Revenue reciting that the business has properly filed all reports and paid all required taxes and penalties, the certificate requirement shall be met, and a paper certificate need not accompany the application or other document, if the commissioner provides to the secretary of state electronic verification of the required information. Upon request of the person seeking certificate information, the commissioner shall provide to the secretary of state verification in lieu of a paper certificate.

(m) Any Tennessee cooperative that has not timely filed with the department of revenue such information as has been required by the Commissioner of Revenue under prior law shall be subject to administrative dissolution in accordance with the procedures specified in § 43-69-202. Upon certification by the commissioner that it has complied with the information reporting requirements that were required under prior law, a cooperative that has been administratively dissolved or that has had its certificate of authority revoked for failure to timely file such information may be reinstated.

43-70-102. (a) The secretary of state may prescribe and furnish on request forms:

(1) Articles of organization;

(2) Certificate of formation; and

(3) The annual report.

If the secretary of state so requires, use of these forms shall be mandatory.

(b) The secretary of state may prescribe and, if prescribed by the secretary of state, shall furnish on request forms for other documents required or

permitted to be filed by Chapters 38-70 of this title. Use of such request forms is not mandatory.

Section 43-70-103. (a) The office of the secretary of state shall collect the following fees when the documents described in Chapters 38-70 of this title are delivered for filing, and for purposes of Chapters 38-70 of this title, no document is considered delivered to the office of the secretary of state for filing unless accompanied by such fee:

	<u>Document</u>	<u>Fee</u>
(1)	Articles including designation of initial registered office and agent	as provided in subsection (d)
(2)	Certificate of formation	20.00
(3)	Application for reserved cooperative name	20.00
(4)	Application for use of indistinguishable name	20.00
(5)	Notice of transfer of cancellation of reserved name	20.00
(6)	Application for and renewal of registered name	20.00
(7)	Application for or change, cancellation, or renewal of assumed name	20.00
(8)	Cooperative's statement of change of registered agent, registered office, or both	20.00
(9)	Agent's statement of change of registered office	5.00 (per cooperative, but not less than 20.00)
(10)	Agent's statement of resignation	20.00
(11)	Articles of amendment	20.00
(12)	Amended and restated articles	20.00
(13)	Restatement of articles	20.00
(14)	Articles of correction	20.00
(15)	Certificate of merger	100.00
(16)	Articles of termination by	

	organizers	20.00
(17)	Notice of dissolution	20.00
(18)	Articles of revocation or dissolution	20.00
(19)	Articles of termination	20.00
(20)	Certificate of administrative dissolution	No Fee
(21)	Application for reinstatement following administrative dissolution	70.00
(22)	Articles of termination following administrative dissolution	100.00
(23)	Certificate of reinstatement	No Fee
(24)	Decree of judicial dissolution	No Fee
(25)	Annual report	as provided in subsection (d)
(26)	Any other document required or permitted to be filed by Chapters 38-70 of this title	20.00

(b) The secretary of state shall collect a fee of twenty dollars (\$20.00) each time process is served on the secretary of state under Chapters 38-70 of this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if it prevails in the proceeding.

(c) The secretary of state shall collect a fee of twenty dollars (\$20.00) for copying all filed documents relating to a cooperative. All such copies will be certified or validated by the secretary of state.

(d) The secretary of state shall collect from each cooperative, if applicable, an annual fee equal to fifty dollars (\$50.00) per each cooperative member in existence on the date of the initial filing, and each year thereafter based on the number of cooperative members in existence on the date of the filing for the annual report, with a minimum fee of three hundred dollars (\$300) and a maximum fee of three thousand dollars (\$3,000).

(e) In addition to the other filing requirements of Chapters 38-70 of this title, a copy of all documents specified in subdivisions (a), (1),(11), (12), (13), (14), (15), (16), (17), (18), (19) and (20) shall also be filed in the office of the register of deeds in the county wherein a cooperative has its principal office, if such principal office is in Tennessee, and in the case of a merger, in the county in which the new or surviving cooperative shall have its principal office, if such principal office is in Tennessee. The register of deeds may charge five dollars (\$5.00) plus fifty cents (50¢) per page in excess of five (5) pages for such filing.

Section 43-70-104. (a) A cooperative may correct a document filed with

the office of the secretary of state if the document:

(1) Contains an incorrect statement; or

(2) Was defectively executed, attested, sealed, certified, or acknowledged.

(b) A document is corrected:

(1) By preparing articles of correction that:

(A) Describe the document (including its filing date) or attach a copy of it to the articles;

(B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(C) Correct the incorrect statement of defective execution; and

(2) By delivering the articles of correction to the office of the secretary of state for filing.

(c) Articles of correction are effective on the effective time and date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Section 43-70-105. (a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of § 43-70-101, the secretary of state shall file it.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed", together with the secretary of state's name and official title and the date and time of receipt, on such document. After filing a document, except for filings pursuant to §§ 43-45-103 and 43-60-202, the secretary of state shall deliver the document, with the filing fee receipt (or acknowledgment of receipt if no fee is required) attached, to the cooperative, or its representative in due course. A cooperative or its representative may present to the office of the secretary of state an exact or conformed copy of the document presented for filing together with such document, and, in that event, the secretary of state shall stamp or otherwise endorse the exact or conformed copy filed, together with the secretary of state's name and official title and the date and time of receipt, and immediately return the exact or conformed copy to the party filing the original of such document.

(c) If the secretary of state refuses to file a document, the secretary of state shall return it to the cooperative or its representative immediately after the document was received for filing, together with a brief, written explanation of the reason for such refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in

part;

(2) Relate to the correctness or incorrectness of information contained in the document;

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect; or

(4) Establish that a document purporting to be an exact or conformed copy is in fact an exact or conformed copy.

(e) Any cooperative document which meets the requirements of Chapters 38-70 of this title for filing and recording shall be received, filed and recorded by the appropriate office, upon payment of the appropriate fees and taxes, if any, notwithstanding any contrary requirements found in any other provisions of the laws of this state.

Section 43-70-106. (a) If the secretary of state refuses to file a document delivered to the office of the secretary of state for filing, the cooperative may appeal the refusal to the chancery court of Davidson County. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(b) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

(d) Any judicial review of the secretary of state's refusal to file a document shall be conducted in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

Section 43-70-107. A certificate attached or certification affixed to a copy of a document filed by the secretary of state, bearing the secretary of state's signature (which may be in facsimile) and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

Section 43-70-108. (a) A person commits a Class B misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500), if the person signs a document, knowing it to be false in any material respect, with intent that the document be delivered to the office of the secretary of state or other required office for filing.

(b) The offense created by this section is in addition to any other offense created by law for the same conduct.

Section 43-70-109. (a) Except as provided in subsection (b), §§ 43-41-102 and 43-70-104(c), a document accepted for filing is effective:

(1) At the time of filing on the date it is filed by the secretary of state, as evidenced by the office of the secretary of state's date and time endorsement on the original document; and

(2) At the time specified in the document as its effective time on

the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but not time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed with the office of the secretary of state.

(c) The office of the secretary of state shall not file any articles unless that document designates the registered agent and registered office of such cooperative in accordance with § 43-45-101. The office of the secretary of state shall not file any other document presented by the cooperative for filing under Chapters 38-70 of this title if at the time of filing the cooperative does not have a registered agent and registered office designated at such time, unless at the time such document is received for filing the office of the secretary of state also receives for filing a statement designating such registered agent or registered office or both.

Section 43-70-201. The secretary of state has the authority and is empowered to perform the duties required of the secretary of state by Chapters 38-70 of this title, including, without limitation, the authority to promulgate necessary and appropriate rules and regulations pursuant to Title 4, Chapter 5, and the power to destroy any records in the secretary of state's office concerning a cooperative ten (10) years after such cooperative has dissolved, withdrawn from the state, or has had its certificate of authority revoked.

Section 43-70-202. An act of a duly authorized deputy of the secretary of state in the secretary of state's behalf under Chapters 38-70 of this title is the equivalent of the act of the secretary of state; provided, that the deputy signs the name of the secretary of state by such deputy as deputy.

SECTION 34. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.


SECTION 35. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 2005, the public welfare requiring it.



PASSED: April 5, 2004



JOHN S. WILDER  
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 20<sup>th</sup> day of April 2004



PHIL BREDEBEN, GOVERNOR